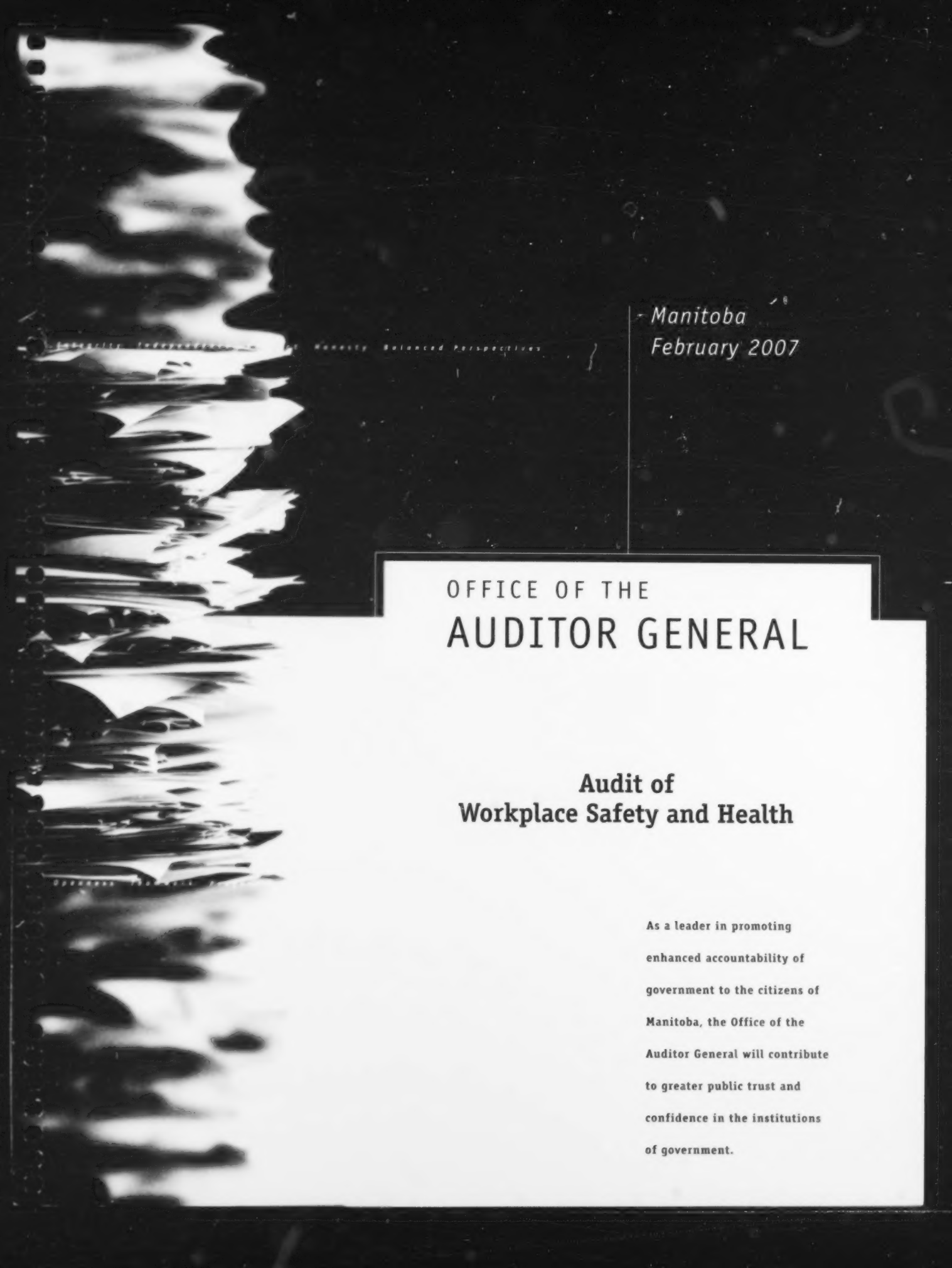

Manitoba
February 2007

OFFICE OF THE
AUDITOR GENERAL

Audit of Workplace Safety and Health

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Office of the Auditor General
500 - 330 Portage Avenue
Winnipeg, Manitoba R3C 0C4

February 2007

The Honourable George Hickes
Speaker of the House
Room 244, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Sir:

I have the honour to transmit herewith my report on the *Audit of Workplace Safety and Health* to be laid before Members of the Legislative Assembly in accordance with the provisions of Section 28 of The Auditor General Act.

Respectfully submitted,

Carol Bellringer

Carol Bellringer, FCA, MBA
Auditor General

TABLE OF CONTENTS

1.0 EXECUTIVE SUMMARY 1

2.0 INTRODUCTION

2.1 Purpose 6
2.2 Audit Authority 6
2.3 Objectives, Scope and Approach 6

3.0 BACKGROUND

3.1 WS&H Legislative Authority 8
3.2 Financial Responsibility 8
3.3 Organization and Reporting Structure 9
3.4 Significant Recent Changes To The Act 11
3.5 Key Performance Information 11

4.0 IDENTIFYING AND PRIORITIZING WORKPLACES FOR INSPECTION – OBSERVATIONS AND CONCLUSIONS 20

4.1 Prioritizing Inspections 21
4.2 Risk Rating Process 22
4.3 Annual Schedule of High-Risk Inspections and Follow-Up 24
4.4 Timing of Inspections 24

5.0 INSPECTION AND MONITORING – OBSERVATIONS AND CONCLUSIONS 26

5.1 Identification and Maintenance of Employer Workplace Information 27
5.2 Policy and Procedures Manual 30
5.3 Responses to Incidents and Complaints 35
5.4 Performance and Documentation of Inspections 37
5.5 Performance and Documentation of Investigations 42
5.6 Enforcement of The Act 47
5.7 Quality Assurance 54

6.0 MEASURING AND REPORTING ON PROGRAM EFFECTIVENESS -OBSERVATIONS AND CONCLUSIONS .. 56

6.1 Strategic Direction Linked To Operational Plans 57
6.2 Program Effectiveness 58
6.3 Program Evaluation Practices 59
6.4 Performance Reporting on Program Effectiveness 60

TABLE OF CONTENTS (cont'd.)

7.0 FOCUSING EDUCATIONAL INITIATIVES - OBSERVATIONS AND CONCLUSIONS 61

7.1 Prioritizing Educational Initiatives 62
7.2 Risk Rating Process 63
7.3 Annual Schedule of Educational Initiatives and Follow-Up ... 64

8.0 RECOMMENDATIONS FOR WS&H 65

RESPONSE FROM THE DEPARTMENT OF LABOUR AND IMMIGRATION 70

APPENDICES

Appendix A: Glossary of Terms
Appendix B: Procedures for Notification and Collection of Administrative Penalties
Appendix C: Sample Administrative Penalty Letter (Warning Letter)

1.0 Executive Summary

BACKGROUND

The Ministry of Labour and Immigration's Workplace, Safety and Health Program (The Program) operates under the authority of *The Workplace Safety and Health Act* (The Act) and its regulations. This program is managed by the Workplace Safety and Health Division (WS&H). The legislation applies to every employer, worker, and self-employed person in Manitoba, with the exception of those under federal jurisdiction. Approximately 45,000 employers and 585,000 workers are covered by The Act.

The Program is delivered through WS&H's head office and four regional offices. For the year ended March 31, 2005 the total expenditures incurred in relation to administering The Act were $5.6 million, of which approximately 77% was for the salaries and benefits of 71 staff. The Province recovered this full amount from the Workers Compensation Board as determined by the Lieutenant Governor in Council.

The Act defines the rights and responsibilities of employers, supervisors, and workers as well as the responsibilities of the Minister of Labour and Immigration, and the Director of WS&H. The fundamental philosophy underlying The Act is the internal responsibility system, which is based on the concept that every individual in a workplace is responsible for health and safety. This system includes a framework for participation, sharing of information and refusal of unsafe work. As indicated by The Canadian Centre for Occupational Health and Safety[1], *"the internal responsibility system is the underlying philosophy of the workplace safety and health legislation in all Canadian jurisdictions".*

The primary means used by WS&H to ensure compliance with The Act is through inspections of workplaces, investigations of incidents, and follow-up of complaints. In addition, the Director is required by The Act to ensure that those to whom The Act applies are *"provided with information and advice pertaining to its administration and to the protection of the safety and health of workers generally".*

AUDIT OBJECTIVES AND SCOPE

Our objectives focused on whether the Workplace Safety and Health Division (WS&H) of the Department of Labour and Immigration (Manitoba Labour) had adequate processes in place for administering *The Workplace Safety and Health Act* (The Act) and its regulations, for managing its performance, and for reporting The Program's effectiveness to the Legislative Assembly of Manitoba.

The audit covered the fiscal year ending March 31, 2006. Statistics presented in this report are for the calendar year ending December 31, 2005. As well, at the time of audit completion, certain data was only available up to December 31, 2004.

Our work was conducted between September 2005 and August 2006 and focused on the operations of the Inspection Services Branch, Prevention Services and Partnerships Branch, and the Mine Safety Branch of WS&H.

[1] A Federal departmental corporation reporting to the Parliament of Canada through the Federal Minister of Labour. The Centre is governed by a Council representing three stakeholder groups: government (federal, provincial, territorial), employers and workers.

Our audit did not address whether the individual workplaces in Manitoba are in compliance with The Act and its regulations. In addition, we did not assess the quality of the external educational programs offered by WS&H.

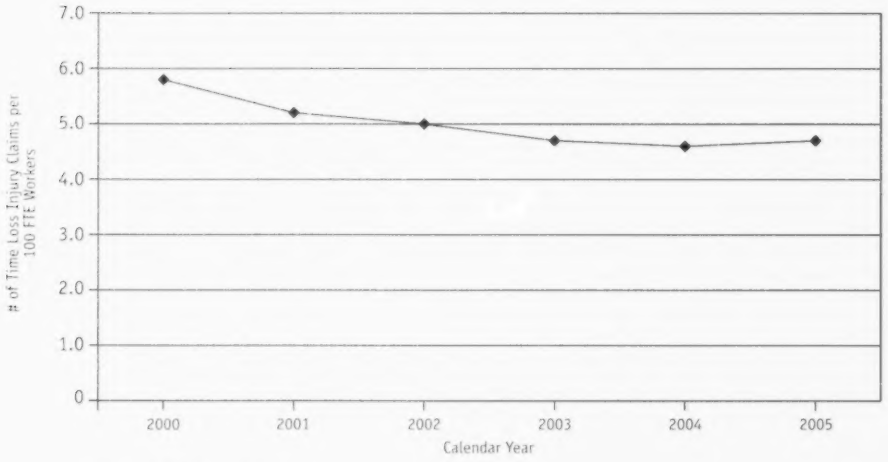
MAIN CONCLUSIONS AND OBSERVATIONS

In 2002, a 25% target for reduction in the time loss injury rate over a five year period was published in the Minister of Labour and Immigration's response to a report entitled, *Building a Workplace Safety and Health Culture*. This report was prepared by a review committee established by the Minister of Labour and Immigration. The time loss injury rate (also known as injury frequency rate) represents the risk to a worker of a workplace injury or disease, resulting in time at work being lost within a calendar year.

WS&H's processes and procedures are primarily focused on reducing the time loss injury rate and progress is being made towards meeting this target. Although the time loss injury rate was reduced by 9.6% between January 2002 and December 2005, an examination of a six year trend indicates that Manitoba's time loss injury rate, as shown in **Figure 1**, has fallen from 5.8 time loss injuries per 100 full-time equivalent workers (FTEs) in 2000 to 4.7 in 2005, signifying a decline of 19% over that five year period.

FIGURE 1

Time Loss Injury Rate for Manitoba for 2000 - 2005



Source: WCB 2005 Annual Report

The number of workplace related fatalities that occur in any given calendar year can fluctuate dramatically. The goal is to have no workplace related fatalities.

FIGURE 2

	2000	2001	2002	2003	2004	2005
Number of Fatality Claims Accepted	27	28	38	19	21	29

Source: WCB 2005 Annual Report

In order to make further progress in achieving the 25% target reduction in the time loss injury rate and to reduce workplace fatalities, additional workplace health and safety program improvements are needed. Some observations are as follows:

Inspection Prioritization, Conduct, and Monitoring (Sections 4.0 and 5.0)

- WS&H needs to ensure that strong enforcement action is taken when Improvement Orders are issued and to utilize Administrative Penalties as incorporated in The Act in 2002. This would encourage corrective actions to be taken by employers who repeatedly fail to comply with Improvement Orders. As of January 3, 2006 a total of 606 warning letters covering 1,885 Improvement Orders, had been sent to various employers that had not complied with their Improvement Orders, stating that non-compliance could result in them receiving an Administrative Penalty. At the time these letters were sent, WS&H was already in a position to actually impose an Administrative Penalty under Section 53.1 of The Act. Under Section 53.1(4) of The Act, this translates into the potential collection of revenue by the Province of between $1.9 million and $9.4 million from Administrative Penalties dependent on the penalty applied (see **Section 5.6.5** of this report). At the time of our audit, no Administrative Penalties had been imposed.

- WS&H did not have information about all employers in the province. The subject database, included in the main database, included only employers that WS&H had had contact with in the past (approximately 7,408 or 16% of 45,000 employers). Another database, included in the main database, was the WCB database that allowed Officers to view WCB data for approximately 70% of all employers in the province. However, the WCB database was primarily used for reviewing claims history, and was only used on a limited basis for considering employers for inspection. Without complete information on employers, it is not possible to ensure all employers eligible for inspection are inspected.

- Inspection resources were directed to higher risk workplaces, however an inspection schedule was not prepared to ensure planned inspection coverage was achieved. Inspections were only performed during regular business hours. For the fiscal year ended March 31, 2005, 18% of incidents occurred outside of regular business hours. The determination of higher risk workplaces was based on Workers Compensation Board of Manitoba (WCB) data which only included approximately 70% of the Manitoba workforce, or approximately 25,500 employers. Additional information is needed to ensure the remaining 30% or 19,500 employers do not include higher risk workplaces that should be prioritized for inspection.

- Inspections and investigations were well documented and performed by trained individuals. However the documentation of safety issues noted and the documentation supporting Improvement Orders issued could be improved.

- Sufficient information on response times was not available for us to conclude on whether serious incidents were always responded to immediately upon notification. Complaints were not always followed-up in a timely manner.
- Inspections were mainly performed on a surprise basis. However, inspections and investigations were not always conducted in accordance with the policy and procedures manual, and there was not always documentation to support the findings for Improvement Orders issued.
- WS&H did not have a quality assurance process in place to ensure inspections and investigations completely meet divisional requirements, including documentation requirements.
- The policy and procedures manual used by WS&H had been recently updated. However, there were some key policies and procedures missing from the manual. An example would be a policy regarding the acceptable timeframe for responding to complaints.

Measuring and Reporting on Program Effectiveness (Section 6.0)

- A special report completed in 2002 titled, *Government Response to the Report of the Workplace Safety and Health Review Committee*, provided broad strategic direction for the WS&H. However, WS&H did not have documented strategic and operational program plans in place to assist in the managing, evaluation and public performance reporting of the effectiveness of their WS&H inspection and training programs. Although eight performance measures have been identified, they have not been linked to planned outcomes and outputs. Therefore, we could not conclude on the adequacy of the mix of performance measures in place.
- Not all performance information is gathered systematically. In addition, there was little evidence to support the gathering and analyzing of performance information by WS&H.
- The information on WS&H which was included in Manitoba Labour's 2004/05 Annual Report only partially fulfilled the *Departmental Annual Reports Instructions* issued by the Department of Finance. The Annual Report could be improved to incorporate some of the additional information contained in the background section in this audit report.

Focusing Educational Initiatives (Section 7.0)

- Educational initiatives were appropriately prioritized to focus on higher risk areas, and were responsive to incidents. WS&H did not formally use statistics of occurrences in the workplace to assess how to focus its educational efforts, however, it responded to serious incidents that occurred by issuing bulletins and engaging in targeted enforcement activities.

RECOMMENDATIONS

Recommendations have been included in **Section 8.0** to assist WS&H in the achievement of their target of a 25% reduction in a time loss injury rate and to reduce workplace fatalities.

2.0 Introduction

2.1 PURPOSE

The culture in Manitoba with respect to workplace safety and health has changed dramatically over the last 30 years. It used to be commonly accepted that people could be injured while at work; however most people in today's society do not accept injury and illness as an inevitable part of work. As indicated in the SAFE Work media campaign:

"Work Shouldn't Hurt"

Despite this major shift in our culture, there are still over 40,000 injuries at work in Manitoba each year. It is with this in mind that we chose to conduct an audit of the Workplace Safety and Health Division (WS&H) of the Department of Labour and Immigration (Manitoba Labour), which is responsible for administering *The Workplace Safety and Health Act* (The Act) and its regulations.

2.2 AUDIT AUTHORITY

The audit was carried out under the authority of Section 14(1) of *The Auditor General Act* which states:

> *"In carrying out his or her responsibilities under this Act, the Auditor General may examine and audit the operations of a government organization with regard to any of the following matters:*
>
> *a) whether financial and administrative provisions of the Acts, regulations, policies and directives have been complied with;*
> *b) whether public money has been expended with proper regard for economy and efficiency;*
> *c) whether the Assembly has been provided with appropriate accountability information;*
> *d) whether the form and content of financial information documents is adequate and suitable."*

2.3 OBJECTIVES, SCOPE AND APPROACH

Objectives

We identified several objectives regarding whether WS&H of Manitoba Labour had adequate processes in place for administering The Act and its regulations, and for managing its performance and reporting its results to the Legislative Assembly of Manitoba.

- To assess whether WS&H deployed its non-emergency inspection resources in response to trends and statistics of accidents/occurrences in the workplace, such that inspections were likely to contribute to the creation of safer workplaces (**Section 4.0 – Identifying and Prioritizing Workplaces for Inspection**).

- To assess whether WS&H had adequate inspection and monitoring processes and procedures in place enabling them to effectively ensure industry compliance with *The Workplace Safety and Health Act* (**Section 5.0 - Inspection and Monitoring**).
- To assess whether WS&H had sufficient operational program plans in place to cost effectively manage the performance of WS&H and whether there was sufficient reporting of its program effectiveness to the Legislature (**Section 6.0 – Measuring and Reporting on Program Effectiveness**).
- To assess whether the WS&H's educational initiatives were influenced by trends and statistics of accidents/occurrences in the workplace such that the initiatives were likely to contribute to the maintenance/ creation of safer workplaces (**Section 7.0 - Focusing Educational Initiatives**).

Audit Scope and Approach

The audit covered the fiscal year ending March 31, 2006. Statistics presented in this report are for the calendar year ending December 31, 2005. As well, at the time of audit completion, certain graph information was only available up to December 31, 2004.

Our work was conducted between September 2005 and August 2006 and focused on the operations of the Inspection Services Branch, Prevention Services and Partnerships Branch, and the Mine Safety Branch of WS&H.

We interviewed individuals within WS&H responsible for the management and administration of the division, reviewed documentation, and requested and reviewed a sample of inspection and investigation files. In addition, we reviewed the Labour Information NetworK (LINK), a computerized system used by WS&H to maintain a central database of all interactions with employers in the province.

Our audit was performed in accordance with the standards for value for money auditing in the public sector recommended by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

Scope Exclusion

Our audit did not address whether the individual workplaces in Manitoba are in compliance with The Act and its regulations. In addition, with respect to the audit objective relating to educational initiatives undertaken by WS&H, we did not assess the quality of the external educational programs offered by WS&H.

Appendix A contains a glossary of terms used in this report.

3.0 Background

3.1 WS&H LEGISLATIVE AUTHORITY

The Workplace Safety and Health Act (The Act), states that its objective is:

> *"to secure workers and self-employed persons from the risks to their safety, health and welfare arising out of, or in connection with, activities in their workplaces; and to protect other persons from risks to their safety and health arising out of, or in connection with, activities in the workplaces."*

The Act applies to every employer, worker, and self-employed person in Manitoba, except those under federal jurisdiction.

The Act defines the rights and responsibilities of employers, supervisors, and workers as well as the responsibilities of the Minister of Labour and the Director of WS&H. The fundamental philosophy underlying The Act is referred to as "the internal responsibility system", and is based on the concept that every individual in a workplace is responsible for health and safety. This system includes a framework for participation, sharing of information and refusal of unsafe work. As indicated by The Canadian Centre for Occupational Health and Safety, *"the internal responsibility system is the underlying philosophy of the workplace safety and health legislation in all Canadian jurisdictions".*

WS&H's primary means to ensure compliance with The Act is through the inspections of workplaces, investigations of incidents, and follow-up of complaints. In addition, the Director is required by The Act to ensure that those to whom The Act applies are *"provided with information and advice pertaining to its administration and to the protection of the safety and health of workers generally"*. The Act and regulations specify that employers have a responsibility to provide training, therefore WS&H has chosen to provide training on legislative requirements, and other workplace health and safety topics.

Another significant means of ensuring compliance with the legislation is the Officers' contact with workplace safety and health committees and representatives. With their right to make recommendations for improving safety and health in their workplaces, the committees and representatives play an integral role in the assessment of a workplace's internal responsibility system.

3.2 FINANCIAL RESPONSIBILITY

The activities of WS&H are funded, by the Accident Fund of the Workers Compensation Board of Manitoba (WCB), an amount determined annually by the Lieutenant Governor in Council. For the year ended March 31, 2005, the total expenditures incurred in relation to administering The Act were $5.6 million, of which approximately 77% was for salaries and benefits. The Province recovered the full amount from the WCB in the fiscal year March 31, 2005, through the Accident Fund.

3.3 ORGANIZATION AND REPORTING STRUCTURE

WS&H is responsible for administering The Act and its regulations, and reports directly to the Minister of Labour. WS&H's objective, as indicated in the *Department of Labour and Immigration Supplementary Information for Legislative Review 2004/05 Expenditures Estimates*, is:

> *"To administer The Act so that safety and health hazards and worker risks are detected and abated in workplaces with the goal of eliminating fatalities, and reducing the incidence of injuries and occupational diseases."*

Two other groups play a significant role in promoting and influencing safety and health in the workplace. These groups are the Advisory Council of Workplace Safety and Health, and SAFE Work.

3.3.1 Divisional Structure and Objectives

WS&H's head office is located in Winnipeg, and there are four regional offices located in Brandon, Thompson, Flin Flon and Snow Lake. As of November 2005, including 23 support staff, WS&H had a total of 71 staff that have a role in administering The Act.

WS&H is comprised of six Branches/Units:

- Inspection Services Branch – 23 Officers and 1 Director;
- Prevention Services and Partnerships Branch – 6 Officers and 1 Director;
- Mine Safety Branch – 4 Mines Inspectors, 1 Engineer and 1 Director;
- Occupational Health Unit – 1 Chief Occupational Medical Officer;
- Occupational Hygiene, Engineering and Ergonomics Branch – 6 Occupational Hygienists, 2 Ergonomists, 1 Engineer, and 1 Director; and
- Mechanical and Engineering Branch.

Each of these Branches, with the exception of the Mechanical and Engineering Branch have a role in administering The Act.

Each of the six Branches that comprise WS&H developed objectives that are specific to the operations of the Branch but yet are still consistent with the objectives of WS&H as a whole. The key objectives of the five Branches relating to The Act, as identified in Manitoba Labour's 2004/05 Annual Report are to:

"Inspection Services Branch

- *Ensure that workplace hazards are identified and corrective action is taken in compliance with the Workplace Safety and Health Act and its associated regulations; and*
- *Promote the internal responsibility system whereby employers and workers undertake their individual and shared responsibility for preventing occupational illness and injury."*

"Prevention Services and Partnerships Branch

- *Promote occupational safety and health in Manitoba workplaces through public awareness, education, training and development of preventative partnerships."*

"Mine Safety Branch

- *Ensure that mining operations are conducted in compliance with the legislation and regulations, and to encourage safe practices to provide the highest practice standards of safety and health for workers;*
- *Promote the internal responsibility system whereby employers and workers in the mining industry undertake their individual and shared responsibility for preventing occupational illness and injury; and*
- *Examine mines' engineering designs, and approve all plans for major construction of new mines and major alteration of old mines to ensure that safety considerations and technological capabilities are thoroughly addressed, in compliance with the regulations."*

"Occupational Health Unit

- *Provide interpretation of injury/illness data - principally the Manitoba Workers Compensation Board claims data;*
- *Assist Division staff in the investigation of health concerns affecting workers and employers and recommend preventative or corrective action;*
- *Consult with health professionals, representatives, workers and employers on occupational health issued; and*
- *Provide medical supervision of health surveillance programs to ensure consistency with professional standards and ethics and with departmental policy."*

"Occupational Hygiene, Engineering and Ergonomics Branch

- *Ensure that workplace hazards related to chemical and biological agents, physical agents, safety engineering and ergonomics risks are identified and corrective action is taken in compliance with the legislation and regulations; and*
- *Consult, on request, with safety and health professionals, workers and employers on occupational hygiene, safety engineering and ergonomic issues."*

3.3.2 Advisory Council

As permitted by The Act, the Lieutenant Governor in Council appointed a council referred to as The Advisory Council on Workplace Safety and Health (The Council) in 1977. The Council is an advisory body with equal representation from workers, employers, and technical/professional organizations. Currently The Council consists of a chairperson and twelve members from industry and business.

The Council advises to the Minister of Manitoba Labour on:

- *"General workplace safety and health issues;*
- *Protection of workers in specific situations;*
- *Appointment of consultation and advisors;*
- *Review of the Workplace Safety and Health Act and its administration undertaken by Council at least once every five years or when requested by the Minister; and on*
- *Any other matter concerning workplace safety and health on which the Minister seeks the Council's advice."*

3.3.3 SAFE Work

SAFE Work is a joint planning initiative developed by the WCB and WS&H in 2002. This initiative is driven by a coordinating committee consisting of individuals from various industry associations as well as representatives from both WCB and WS&H. The two main goals of this initiative are to create a culture in the province which values and promotes healthy and safe workplaces, and to achieve a 25% reduction in the time loss injury rate over five years.

A key aspect of the SAFE Work initiative is its public awareness campaigns that have been conducted through the media. A survey conducted by the WCB indicated that approximately eight out of ten Manitobans are aware of the SAFE Work message.

3.3.4 Workplace Safety and Health Committees

Workplace safety and health committees and worker representatives are assigned significant rights and responsibilities under The Act. They are the primary mechanism for employers and workers to work together in ensuring that the internal responsibility system is effective it meeting its goals. Committees and representatives assist employers in identifying, assessing and controlling hazards through regular inspections of the workplace, participating in incident investigations, and the monitoring of policies, plans and programs.

The committee and representatives have the ability to make recommendations for change to the employer which the employer is required by legislation to consider. By providing minutes of meetings to WS&H, the committees and representatives provide valuable information on safety and health issues in their workplaces. These minutes are available to Officers to review in assessing safety and health concerns in individual workplaces.

3.4 SIGNIFICANT RECENT CHANGES TO THE ACT

In 2001, the Minister of Manitoba Labour announced a six-point strategy to reduce workplace injuries. The Minister formed a Review Committee, consisting of members of The Council, to conduct public consultations on the strategy. The Review Committee distributed a public discussion paper to stakeholder groups, requested written submissions on the discussion paper, and held 19 public meetings throughout Manitoba. A total of 183 submissions were received, and posted on the WS&H website. The Review Committee issued a report entitled, *Building a Workplace Safety and Health Culture*, in 2002. This report included 62 recommendations that related to four different priority areas: public awareness and education; training; prevention; and responsibility.

Following the release of this report, several changes were made to The Act. Since the proclamation of these changes to The Act on August 9, 2002, WS&H worked to update the regulations. The new updated regulations took effect on February 1, 2007.

3.5 KEY PERFORMANCE INFORMATION

This section contains various statistics relating to workplace injuries and fatalities as well as the operations of WS&H in Manitoba over the last five years. It is from this information that we can obtain a picture of how WS&H has impacted on workplace injuries/fatalities in Manitoba.

3.5.1 Number of Time Loss Claims

Figure 3 highlights that the number of time loss claims has steadily declined from calendar year 2000 to 2005. The number of time loss claims accepted or unadjudicated by WCB was 20,054 in 2000 and 17,716 in 2005, representing a decrease of nearly 12%. The number of total time loss claims, divided by the total number of full time equivalent workers covered by WCB, determines the time loss injury rate, as presented in **Figure 1**.

FIGURE 3

Number of Time Loss Claims

Accepted or Unadjudicated Claims	2000	2001	2002	2003	2004	2005
Time Loss Claims	20,054	18,771	18,109	17,609	17,308	17,716
Fatalities	27	28	38	19	21	29
Pension	66	120	131	138	163	191
a) Total Time Loss Claims	20,147	18,919	18,278	17,766	17,492	17,936
No Time Loss Claims	20,052	18,114	17,322	17,767	17,372	17,531
Total Accepted or Unadjudicated Claims	40,199	37,033	35,600	35,533	34,864	35,467
b) Total Covered Population (full-time equivalents)*	347,000	362,000	367,000	377,000	380,000	382,000
Time Loss Injury Rate (a/b)	**5.8**	**5.2**	**5.0**	**4.7**	**4.6**	**4.7**
The time loss injury rate is the number of time loss injuries per 100 workers	Goal: 25% reduction to time loss injury rate. The actual reduction from 2000 to 2005 is 19%.					

Source: WCB 2005 Annual Report

* Estimated number.

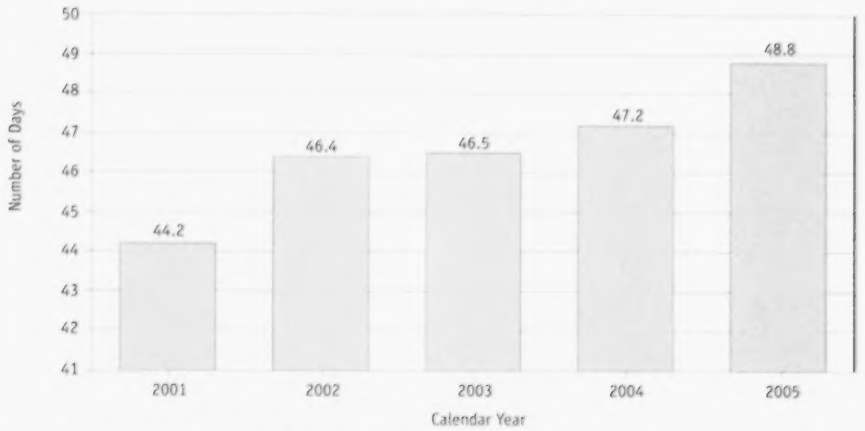
The time loss injury statistics are based on WCB data which is limited to WCB-insured industries. Given that *The Workers Compensation Act* only covers approximately 70% of the workforce in Manitoba, injury rates are not available for the entire workforce. Despite this limitation, the WCB data can still provide a basis for measuring the overall injury rates in Manitoba.

3.5.2 Average Time Loss from Workplace Injuries

Although the number of time loss injury claims is declining, the employee time away from work associated with these claims is rising. As illustrated in **Figure 4**, the average time loss of claims from all years, in calendar year 2001 was 44.2 days. However, the average time loss of claims from all years, in calendar year 2005 was 48.8 days, an increase of 10.4%.

FIGURE 4

Average Time Loss From Injury*



Source: WCB 2005 Annual Report

* Average Time Loss From Injury is referred to as Duration in this Report

Similar to the time loss injury rate, the average time loss resulting from an injury is also impacted by the demographics of the workforce. With an aging workforce, the amount of time required to heal from an injury increases.

3.5.3 Injury Rate Comparison Across Canada

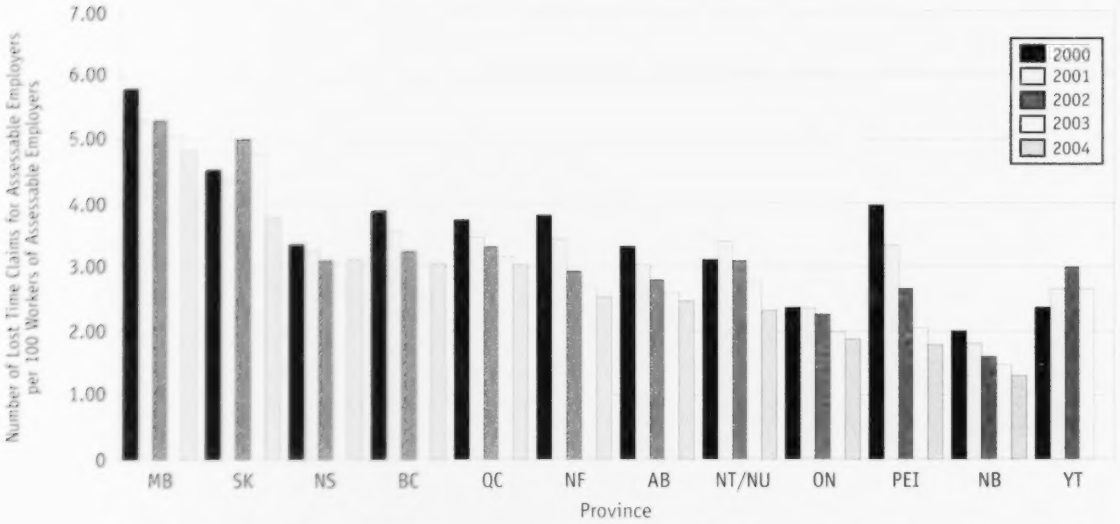
The Association of Workers' Compensation Boards of Canada (AWCBC) performs cross-jurisdictional comparisons of key statistics relating to workplace safety and health. A key statistical measure used by AWCBC is the injury frequency rate. The injury frequency rate is essentially equivalent to the time loss injury rate used in Manitoba; however the approach used to calculate the time loss injury rate differs slightly from the AWCBC approach.

As illustrated in **Figure 5**, since calendar year 2000, Manitoba has had the highest injury frequency rate in Canada. In 2000, the injury frequency rate per 100 workers was 5.79 in Manitoba while the average rate for all of Canada was 3.52 per 100 workers. Despite the fact that the injury frequency rate per 100 workers in Manitoba decreased from 5.79 in 2000 to 4.83 in 2004, representing nearly a 17% decrease, in 2004 Manitoba's injury frequency rate still exceeded the average of 2.61 by 85%.

Significant limitations in comparing the injury frequency rates across Canada are that the percentage of workers covered under the workers' compensation system varies by province, as does how it is administered. See **Figure 5** source information for further details.

FIGURE 5

Injury Frequency Rate by Province for Calendar Years 2000 - 2004



Source: Obtained from the *Key Statistical Measures Report* for 2000-2004 available on the Association of Workers' Compensation Board of Canada's website - www.awcbc.org.

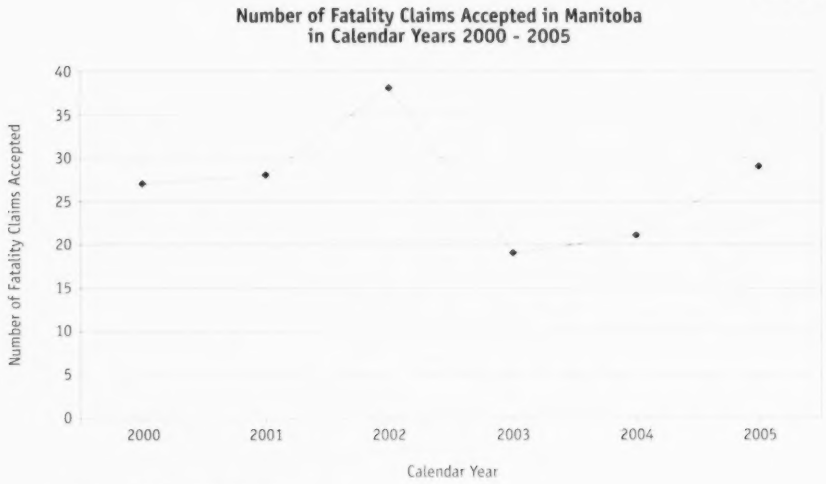
(1) The injury frequency rate was not available for Yukon for 2004, therefore the average rate for 2004 excluded Yukon, and Yukon is not included in the chart for 2004.
(2) NB has a 3 day waiting period; therefore the number of lost time claims listed may not reflect every lost time injury for these provinces.
(3) NS has a 2 day waiting period; therefore the number of lost time claims listed may not reflect every lost time injury for these provinces.
(4) As of April 1, 2002, PEI has a waiting period equivalent to 60% of weekly compensation being required before compensation is payable; therefore the number of lost time claims listed in this report may not reflect every lost time injury for PEI as of March 31 of the following year.
(5) MB - In the 2004 Annual Report, the preliminary injury frequency rate was 4.5%. This figure has been subsequently revised to 4.6%. The Annual Report's computation differs slightly from the AWCBC computation of this statistic.
(6) ON - The official injury frequency rate included in Ontario's Annual Report and other publications for 2004 is 2.10. This rate is harmonized with the Ministry of Labour.
(7) SK - Different methodologies are used to compute the injury frequency rate than those used to compute statistics released in the SK WCB Annual Report. Differences in figures are to be expected.

In discussions with WS&H management, they attributed the differences in injury frequency rates across jurisdictions to the varying means that are used to calculate the lost time claims. In addition, management commented that the mix of industries in Manitoba as compared to other provinces contribute to more time loss injuries. While the efforts of WS&H can have an impact on the injury rates as well as the fatality rate, there are external factors that also affect these rates. These external factors include the demographics of the workforce as well as the culture of the workforce.

3.5.4 Fatality Rate

The number of workplace related fatalities that occur in any given calendar year can fluctuate dramatically, as shown in **Figure 6**. There were 38 workplace fatalities that occurred in 2002 and 19 in 2003. Overall the number of fatalities in 2005 has only changed marginally from the number of fatalities in 2000. The number of fatalities in 2000 was 27, and the number of fatalities in 2005 was 29.

FIGURE 6



Source: WCB 2005 Annual Report

3.5.5 Statistics

Figure 7 highlights statistical trends. The three Branches of WS&H that perform inspections of workplaces are the Inspection Services Branch, the Prevention Services and Partnerships Branch, and the Mine Safety Branch. In fiscal year ended March 31, 2005, these Branches performed 5,194 inspections of workplaces to ensure compliance with The Act, and issued 4,241 Improvement Orders. The number of inspections increased marginally from the year ended March 31, 2004, however the number of Improvement Orders written actually decreased by 30% in the year ended March 31, 2005. This was because a change in The Act in 2002 included a requirement for a written safety and health program that would include 11 components. Employers began to comply with this requirement, thus reducing the number of Improvement Orders issued.

FIGURE 7

Workplace Safety and Health Division - Statistical Trends - Unaudited
For the Years Ending March 31

Statistics	2001	2002	% Change	2003	% Change	2004	% Change	2005	% Change
Complaints	524	582	11%	586	1%	589	1%	755	28%
Inspections	2,760	3,242	17%	5,878	81%	5,184	-12%	5,194	0.2%
Investigations	191	306	60%	590	93%	589	0%	746	27%
Improvement Orders Issued	2,847	4,694	65%	5,390	15%	6,064	13%	4,241	-30%
Administrative Penalties Imposed	N/A	N/A	0%	-	0%	-	0%	-	0%
Administrative Penalties Collected	-	-	0%	-	0%	-	0%	-	0%
Appeals Received	N/A	N/A	0%	1	100%	6	500%	16	167%

Source: Labour and Immigration Annual Reports and per discussion with Management of WS&H.

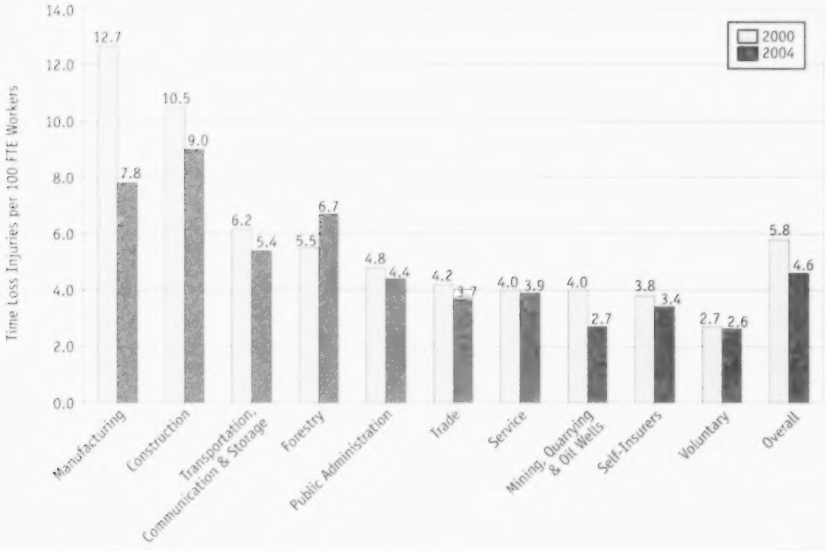
The number of complaints increased by 28% between March 31, 2004 and March 31, 2005 and the number of investigations conducted increased by 27%. Management advised that the increase in the number of complaints is likely due to the increased public awareness resulting from educational initiatives to increase awareness of workplace safety and health. Management also advised that the increase in the number of investigations is likely due to more employers being aware of the requirement to report incidents to WS&H.

3.5.6 Risk of Injury and Illness by Industry

As shown in **Figure 8**, the risk of injury and illness occurring in the workplace varies greatly between industries. For instance, the time loss injury rate for construction in the calendar year 2004 was 9.0 while the time loss injury rate for mines, quarrying, and oil wells was 2.7.

FIGURE 8

Time Loss Injury Rate by Major Industry Sectors For Calendar Years 2000 and 2004

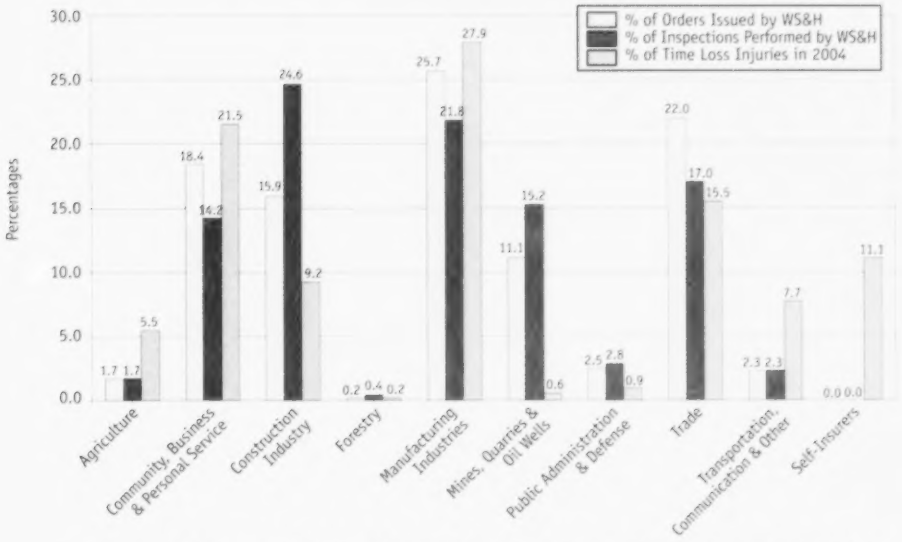


Source: *Manitoba Workplace Injury & Illness Statistics Report for 2000-2004*

Given these differences in **Figure 8** between industry sectors, a reasonable expectation is that WS&H would focus its resources on the industries of higher risk. Two indicators of the amount of resources that WS&H utilized on an industry are the number of inspections performed, and the number of Improvement Orders written. As demonstrated by the chart in **Figure 9**, the percentage of Improvement Orders written and inspections performed by WS&H in the fiscal years 2000-2005 relatively parallels the percentage of time loss injury rates for each industry in calendar year 2004.

FIGURE 9

Percent of Improvement Orders Issued and Inspections Performed by WS&H in 2000 - 2005 by Industry vs. Number of Time Loss Injuries by Industry in 2004 Per WCB Statistics



Source: The % of Improvement Orders issued and the % of Inspections performed by WS&H were determined using data from the LINK system. Note that 1.7% of all orders issued and 3% of all inspections performed during this period did not indicate the industry, therefore these orders and inspections were excluded from this analysis. The % of time-loss injuries in the calendar year 2004 was obtained from *Manitoba Workplace Injury & Illness Statistics Report for 2000-2004*.

This chart illustrates the correlation between the time loss injuries and the number of inspections performed and the number of Improvement Orders issued. Generally industries with the higher time loss injuries had more inspections and were issued a larger number of Improvement Orders. This further highlights the important impact enforcement could have in ensuring Improvement Orders are complied with in order to achieve a reduction in time loss injuries.

3.5.7 Nature of Injuries

Figure 10 highlights that the most common injury resulting in time loss for five calendar years has been in the category of sprains, strains, tears, and unspecified, with approximately 48% of all time loss claims in calendar year 2004.

FIGURE 10

Time Loss Claims by Nature of Injury
2000 to 2004

Nature of Injury	2000	2001	2002	2003	2004
Sprains, strains, tears, unspecified	7,961	8,504	8,554	8,619	8,289
Bruises, contusions	1,792	1,646	1,577	1,605	1,581
Cuts, lacerations	1,783	1,740	1,585	1,450	1,349
Fractures	728	667	665	699	803
Traumatic injuries to muscles, tendons, ligaments, joints	1,016	1,206	617	235	397
Foreign bodies (superficial splinters, chips)	622	502	423	432	366
Sprains and bruises	159	37	183	246	346
Crushing injuries	489	522	426	410	326
Punctures, except bites	305	303	270	224	263
Tendonitis	352	276	278	231	205
Back pain, hurt back	636	177	224	171	192
Dislocations	132	76	64	112	178
Abrasions, scratches	91	50	107	157	160
Second-degree heat burns, scalds	122	38	89	112	131
Traumatic tendonitis	110	56	75	81	117
Epicondylitis	119	100	135	133	109
Carpal tunnel syndrome	165	135	116	148	106
Cuts, abrasions, bruises	93	81	74	109	103
Soreness, pain, hurt, except the back	345	192	206	113	103
Fractures, and other injuries	70	26	98	82	100
Inguinal hernia	119	105	98	109	94
Deafness, hearing loss or impairment	35	57	68	57	87
Unknown	39	62	165	38	87
Multiple diseases, conditions, and disorders	14	4	31	157	75
Traumatic epicondylitis	-	7	36	38	74
Sprains, strains, tears, n.e.c.	-	85	164	72	69
Heat burns, scalds, unspecified	159	249	96	71	67
Amputations, fingertip	86	58	60	62	64
Concussions	51	41	56	72	64
Missing/Not Coded	595	570	246	267	211
"Other" Nature Codes	1,771	1,021	1,083	1,170	1,155
Total	19,959	18,593	17,869	17,482	17,271

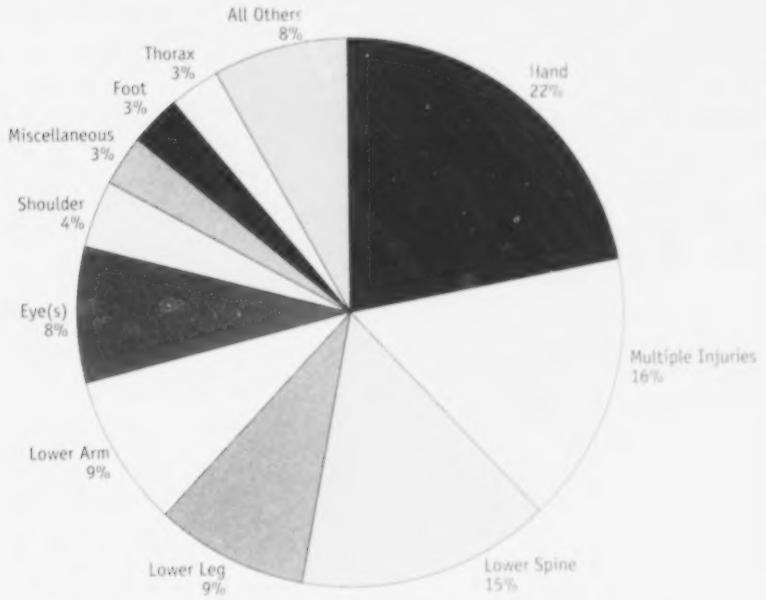
Source: *Manitoba Workplace Injury & Illness Statistics Report for 2000-2004.*

3.5.8 Region of Body Injured

Figure 11 indicates that in calendar year 2004 in Manitoba, the most commonly injured part of the body was the hand, with 22% of all injuries. However, **Figure 12** shows that in calendar year 2004, nearly 40% of all time loss claims involved injury to the trunk of the body. The reason for this difference is because although the most commonly injured part of the body is the hand, many hand injuries would not result in time loss from work.

FIGURE 11

Region of Body Injured
(Based on Total Injuries in Manitoba in Calendar Year 2004)



Source: WCB 2004 Annual Report

FIGURE 12

Time Loss Claims by Part of Body Affected
2000 to 2004

Part of Body	2000	2001	2002	2003	2004
Trunk	7,103	6,522	6,420	6,563	6,823
Back including spine and spinal cord	5,025	4,714	4,762	4,803	4,876
Other trunk	2,078	1,808	1,658	1,760	1,947
Upper Extremities	5,176	4,731	4,537	4,274	4,308
Hands/wrists except fingers	1,744	1,495	1,308	1,372	1,426
Fingers	2,212	2,172	2,046	1,820	1,804
Other upper extremities	1,220	1,064	1,183	1,082	1,078
Lower Extremities	2,866	2,757	2,762	2,763	2,720
Legs	1,283	1,271	1,250	1,253	1,281
Ankles/feet (not toes)	1,271	1,267	1,231	1,233	1,162
Other lower extremities	312	219	281	277	277
Head and Neck	1,623	1,424	1,361	1,338	1,395
Eyes	920	779	712	712	662
Other head	451	428	429	430	493
Neck	252	217	220	196	240
Multiple Body Parts	2,347	2,397	2,368	2,135	1,677
Body Systems	246	190	157	141	134
Missing/Not Coded/Part of Body Unknown/Other	598	572	264	268	214
TOTAL	19,959	18,593	17,869	17,482	17,271

Source: *Manitoba Workplace Injury & Illness Statistics Report for 2000-2004*. (Table 9) Based on the CSA Z795 coding standard.

4.0 Identifying and Prioritizing Workplaces for Inspection – Observations and Conclusions

We reached the following overall conclusions in relation to the Identifying and Prioritizing Workplaces for Inspection audit objective and criteria:

Audit Objective and Criteria	Conclusions
To assess whether WS&H deployed its non-emergency inspection resources in response to trends and statistics of accidents/occurrences in the workplace, such that inspections were likely to contribute to the creation of safer workplaces. In particular whether:	Although WS&H had an adequate process for prioritizing non-emergency inspection resources, it did not properly schedule these inspections once identified. In addition, non-emergency inspections were not targeted at times that are considered higher risk.
4.1 Prioritizing Inspections	
• Inspection resources were prioritized to focus on higher risk (potentially hazardous) workplaces.	• Non-emergency inspection resources were prioritized to focus on higher risk workplaces; however, there was no documented rationale to support the allocation of employee resources.
4.2 Risk Rating Process	
• An employer (workplace) risk rating process was in place.	• An employer risk rating process was used by WS&H to determine which employers and sectors were at highest risk. However, that process was limited to WCB data which only included approximately 25,500 employers or 70% of the workforce. The employer risk rating process has not been redone since initially completed in March 2004.
4.3 Annual Schedule of High-Risk Inspections and Follow-up	
• Based on the risk ratings determined for each employer, an annual work schedule of the higher risk inspections to be performed was prepared.	• WS&H did not prepare an annual work schedule for the inspections of the higher risk employers.
• Periodically, a review of the inspection schedule was completed to determine if the plan could be fulfilled and, if not, whether it was revised accordingly.	• As there was no schedule prepared as to when higher risk employers would be inspected, there was no follow-up of the schedule.
4.4 Timing of Inspections	
• WS&H performed some inspections at times of day that would be considered to be higher risk.	• WS&H did not target inspections at times of day that were considered higher risk.

In reaching the overall conclusions, we examined four key areas that relate to Identifying and Prioritizing Workplaces for Inspection:

4.1 Prioritizing Inspections;
4.2 Risk Rating Process;
4.3 Annual Schedule of High-Risk Inspections and Follow-up; and
4.4 Timing of Inspections.

Detailed audit criteria and observations are presented in the related sections.

4.1 PRIORITIZING INSPECTIONS

Audit Criteria

Non-emergency inspection resources should be prioritized to focus on higher risk (potentially hazardous) workplaces (**Section 4.1.1**).

4.1.1 A Process for Prioritizing Inspections was in Place, However the Process for Allocating Resources was Unclear

Observations

Process for Prioritizing Non-Emergency Inspections Was in Place

- WS&H maintains a Priority Firms Team, within the Prevention Services and Partnerships Branch, which is comprised of:
  - Two Officers assigned to general Priority Firms work;
  - One Officer assigned to the Healthcare sector;
  - One Officer assigned to the Agricultural sector;
  - One Officer assigned to the Construction sector; and
  - One Officer assigned to the Schools sector.
- WS&H prioritized its non-emergency inspection resources to focus on higher risk areas, however, there was no process in place to determine how many Officers should be assigned to the Priority Firms Team.
- WS&H used time loss and no time loss injury statistics supplied by WCB to prioritize which employers should be inspected. Based on these statistics, a list of 55 Priority Firms (Employers) was prepared in March 2004. This information was also used by WS&H to identify the high-risk industries, such as the healthcare sector and construction sector.
- Management advised that the Priority Firms Team focuses a significant amount of time and resources to working with the top 55 firms to educate them about workplace safety and health. The team also conducts regular inspections of these employers' workplaces to limit the risk of injury or illness in these workplaces.
- In addition to the work performed by the Priority Firms Team, based on past history, Officers in the Inspection Services Branch will focus on high-risk employers when deciding what workplaces to randomly inspect.
- However, WS&H did not have a clear process in place to determine how many Officers to assign to the Priority Firms Team.

Targeted Enforcement in Use

- In addition to prioritizing non-emergency inspection resources based on statistics, WS&H also assigned resources to issues as they occurred. Two examples of issues that arose while we were conducting our audit were working alone and temporary workers issues. WS&H refers to these initiatives as Targeted Enforcement.

- For example, during the course of our audit a gas station attendant was killed while working alone in Montreal. Two days after the incident, a new project was created by WS&H in LINK to address the concern of working alone policies and procedures. The project was to include full inspections of 25 companies, randomly selected in the gas bar/convenience store sectors, to determine if they have appropriate working alone plans and whether these plans were being followed.

4.2 RISK RATING PROCESS

Audit Criteria

An employer (workplace) risk rating process should be in place. More specifically we looked to find whether:

- WS&H used fatality rates and time loss injury rates as a guide to high-risk areas that needed to be focused on for future inspections (**Section 4.2.1**); and
- Employer risk-ratings were updated periodically in response to reported events as well as trends and statistics of accidents/occurrences in similar workplaces (**Section 4.2.2**).

4.2.1 Fatalities and Time loss Injury Statistics Were Used to Identify High-Risk Areas

Without a risk rating process in place that considers all of the employers in the province, WS&H may not necessarily be focusing their inspection efforts as effectively as possible.

Observations

Fatality Information Was Used to Guide Future Inspections

- The number of workplace fatalities that tend to occur in a given year in Manitoba is relatively small. From 2002 to 2004 the number of workplace fatalities in Manitoba, not including by-stander deaths or occupational disease deaths, was between sixteen and seventeen per year. As a result, it is not necessary for WS&H to wait for formal fatality statistics to determine the high-risk areas that need to be focused on.
- Instead of using formal fatality statistics, as fatalities occur, WS&H determined what contraventions of The Act played a role in the fatality. Based on this information, WS&H would then consider initiating a targeted enforcement project to inspect several other workplaces similar to the one in which the fatality occurred, to determine whether the same contraventions existed in those workplaces. By doing this, WS&H's goal was to initiate the correction of the same contravention at these similar workplaces in the hope of preventing the same tragedy from occurring twice.

Time Loss Injury Statistics Used to Identify High-Risk Areas but Limited to WCB Data

- In March 2004, WS&H began using a risk rating process to identify higher risk employers in the province. The staff member that performed the analysis, began by analyzing the number of time loss claims per employer, and narrowed down the data to all employers that had 12 or more time loss claims in 2003. This identified 226 employers. The employers included in the list that were already identified as being part of a high-risk sector or that were not within provincial jurisdiction were removed, leaving 159 employers. The list was then sorted according to a risk index which combined two elements - the total injury rate per 100 workers and the time loss injury rate per 100 workers. At this point the top 55 priority firms were determined.
- The limitation of the risk rating process used by WS&H was that the only data that was included in determining the top 55 firms was WCB data. Therefore, if an employer was not registered with WCB they would not have been considered in this analysis. Given that WCB only covers approximately 70% of the workforce in Manitoba, this poses a significant limitation.
- While the WCB data covers only 70% of all workplaces, with the exception of agriculture, workplaces covered by the WCB represent those sectors with the highest injury rates (e.g., manufacturing and construction). All other Canadian workplace safety and health inspection agencies rely on workers' compensation data to determine injury rates. WS&H is currently working in partnership with the WCB to develop a better means of determining injury rates by sector and injury, based on the WCB data.

4.2.2 Employer Risk Ratings Were Last Updated in March 2004

Observations

- The analysis of which firms were the top 55 had not been done since March 2004, therefore it was not known whether these firms were still in fact the 55 firms with the most significant risk of time loss injuries. Management advised they felt that if the analysis were to be performed again the top 55 firms would remain essentially unchanged.
- The time loss and no-time loss injury rates were not received by WS&H for firms other than the top 55 firms, although the number of time loss and no-time loss claims was readily available to WS&H.
- Without a regular review of which firms have the highest risk of injury, and a regular review of the time loss injury rates for these employers, the inspection resources may be inappropriately focused.

4.3 ANNUAL SCHEDULE OF HIGH-RISK INSPECTIONS AND FOLLOW-UP

Audit Criteria

Based on the risk ratings determined for each employer, an annual schedule of the high-risk inspections to be performed should be prepared. In addition, periodically a review of the inspection schedule should be completed to determine if the plan can be fulfilled and, if not, it should be revised accordingly (**Section 4.3.1**).

4.3.1 No Schedule Was in Place for Inspections of High-Risk Employers

Observations

- Although WS&H did have a listing of high-risk employers that they would focus their efforts on, there was no annual schedule that outlined the inspections to be completed throughout the year for each of the high-risk employers.
- Management of WS&H indicated that they work with the Officers and use data on injury rates or specific information on types of injuries occurring in industries, to determine inspections of high-risk employers. They further indicated that WS&H relies on the professionalism of its trained Officers in responding to issues and complaints in workplaces assigned to them, and determining where their efforts should be focused in responding to those issues and complaints in the various workplaces, rather than relying on a specific schedule.
- One consequence of not having an annual inspection schedule for high-risk employers is that there is an increased risk that some of the highest risk employers will not be inspected regularly. This could result in these employers having unsafe working conditions, which could potentially result in injuries to workers, or even fatalities.

4.4 TIMING OF INSPECTIONS

Audit Criteria

WS&H should perform some inspections at times of day that would be considered higher risk (**Section 4.4.1**).

4.4.1 Inspections Were Not Targeted At Higher Risk Times

The risk of injury may be increased outside of regular business hours, as shift work can lead to sleepiness and decrease alertness, and decision-making ability – factors that can contribute to accidents and injuries. In addition, the workers that staff these shifts tend to be younger and less experienced, thus increasing the risk of injury.

Observations

- WS&H only performed inspections during regular business hours. It did not take into consideration what time of day would be considered highest risk of an incident or injury occurring when determining what time of day to perform an inspection.
- Of all of the investigations recorded in LINK for the fiscal year ended March 31, 2005, 96% of the investigations had the time the incident (serious injury or fatality) occurred noted. Of these investigations, over 18% of the incidents occurred outside of regular business hours. By not performing inspections at all times of day when incidents are occurring, WS&H may be missing opportunities to identify weaknesses in workplaces that have incidents outside of regular business hours.

5.0 Inspection and Monitoring – Observations and Conclusions

We reached the following overall conclusions in relation to the Inspection and Monitoring audit objective and criteria:

Audit Objective and Criteria	Conclusions
To assess whether WS&H had adequate inspection and monitoring processes and procedures in place enabling them to effectively ensure industry compliance with *The Workplace Safety and Health Act*. In particular, whether:	WS&H had inspection and monitoring processes and procedures in place to ensure industry compliance with The Act and its regulations. However, there are improvements needed to these processes and procedures to effectively ensure industry compliance with The Act.
5.1 Identification and Maintenance of Employer Workplace Information	
• WS&H had processes for obtaining and maintaining complete and current information on employer workplaces in the province.	• WS&H did not have information about all employers in the province. The subject database, included in the main database, included only employers that WS&H had had contact with in the past (approximately 7,408 or 16% of 45,000 employers). Another database, included in the main database, was the WCB database that allowed Officers to view WCB data for approximately 70% of all employers in the province. However, the WCB database was primarily used for reviewing claims history, and was only used on a limited basis for considering employers for inspection. • While there was one common database that was easily accessible by all Officers, some key information was not included in the database and many of the fields were optional.
5.2 Policy and Procedures Manual	
• A comprehensive policy and procedures manual, that was consistent with The Act and its regulations, was in use and updated regularly.	• The policy and procedures manual used by WS&H was readily available to all staff and it was recently updated. However, it was incomplete in a few areas, and did not include a policy as to how often each employer in the province should be inspected.
5.3 Responses to Incidents and Complaints	
• Responses to incidents and complaints were prompt.	• Sufficient information was not available for us to conclude on whether serious incidents were always responded to immediately upon notification. • Complaints were not always followed-up in a timely manner in accordance with the "Prioritization of Complaints" policy.
5.4 Performance and Documentation of Inspections	
• Inspections were thoroughly conducted and documented.	• Inspections and investigations were well documented, were performed by well trained individuals, and were mainly performed on an unannounced basis. However, inspections and investigations were not always conducted in accordance with the policy and procedures manual, and there was not always documentation to support the findings for Improvement Orders issued.
5.5 Performance and Documentation of Investigations	
• Inspections were thoroughly conducted and documented.	
5.6 Enforcement of The Act	
• The enforcement provisions of The Act (Improvement Orders, Administrative Penalties and offences) were appropriately utilized.	• Improvement Orders were not always issued when deficiencies were noted. • Improvement Order follow-up was timely. However, the method of follow-up was not always sufficient (i.e., Compliance confirmed by fax for Improvement Orders that could be visually inspected), and the follow-up was not always sufficiently documented. • WS&H had an appropriate appeals process that was consistent with The Act. • No Administrative Penalties were imposed, even though a change to the legislation enabling this was passed in August 2002. • WS&H had an adequate plan for recording and collecting Administrative Penalties. However, as previously mentioned, none have been collected.
5.7 Quality Assurance	
• A quality assurance review process was in place.	• WS&H did not have a quality assurance review process in place.

In reaching the overall conclusions, we examined seven key areas that relate to WS&H's Inspection and Monitoring for ensuring compliance with The Act:

5.1 Identification and Maintenance of Employer Workplace Information
5.2 Policy and Procedures Manual
5.3 Responses to Incidents and Complaints
5.4 Performance and Documentation of Inspections
5.5 Performance and Documentation of Investigations
5.6 Enforcement of The Act
5.7 Quality Assurance

Detailed audit criteria and observations are presented in the related sections.

5.1 IDENTIFICATION AND MAINTENANCE OF EMPLOYER WORKPLACE INFORMATION

Audit Criteria

WS&H should have a process for obtaining and maintaining complete and current information on employer workplaces in the province. Specifically, we reviewed whether:

- A common, up-to-date database or listing of all employers in the province was used by all Officers;
- The employer database included key information about each employer in the province and their safety and health history; and
- WS&H updated the employer database, to ensure completeness and accuracy, by using various sources (**Section 5.1.1**).

5.1.1 A Common Employers Database, Containing Approximately 70% of All Employers in the Province (45,000 Employers), Was Used By All Officers. However, Only 16% of All Employers Had Been Contacted by WS&H.

The LINK database, although accessible to all users, is not a complete inventory of workplaces that can be considered for inspection. Without a complete inventory of workplaces, WS&H's ability to carry-out its mandate of administering The Act and regulations relating to workplace safety and health is limited to inventoried employers.

In addition, most of the data fields in LINK are optional. With data fields being optional, there is the risk that this data will not be entered, resulting in potential future inefficiencies for WS&H. With a key field such as the phone number of an employer not being recorded, an Officer unfamiliar with the employer would have to search for it, rather than simply looking it up in LINK.

Performing regular comparisons of the LINK database to other employer databases would enable WS&H to be aware of all employers in the province. By being aware of all employers, WS&H would be better able to more fully prioritize their inspection resources

to the high-risk employers. Without awareness of all employers, it is not possible to ensure that all high-risk employers in the province are inspected.

Observations

A Common Database Was in Use

- WS&H used a Lotus Notes application called LINK - **L**abour **I**nformation **N**etwor**K** to record all of its interactions with employers in the province. LINK was easily accessible by all Officers as it was maintained on WS&H's network, to which all WS&H staff had access. In addition, when an Officer would perform inspections or investigations in the field, the database was available off-line through the use of replication.

- Replication enables an Officer to view all data that was included in the database at the time of replication while working off-line. The replica permits the Officer to make changes to tasks in the database that have been assigned to them. When an Officer later re-connects through LINK on the network, the replica on their hard drive automatically updates LINK on the network. After this update has occurred, all of the work performed by the Officer while working off-line is available for viewing by all other LINK users.

- To assess whether all Officers were re-connecting to LINK on the network on a regular basis and thereby replicating, we reviewed the user activity log for LINK at a particular point in time. From our review of the user activity log, we were able to determine that all Officers had either accessed LINK on the network within a reasonable timeframe or there were reasonable explanations for their lack of activity on the user log.

Most Key Information Was Included in LINK, But Was Not Required to be Included

- The subject (company) database, included in LINK, maintained by WS&H normally contained most of the important information about employers, such as:

  - Company common name;
  - Addresses of locations for employers;
  - History of past contact with employers (i.e., inspections and investigations conducted);
  - Details of Administrative Penalty Letters sent to employers; and
  - A link to WCB claims history for the employers.

  However, there were few controls in place to ensure that all important information was recorded for each employer as most of the data fields were optional. For example, when a new subject (company) is added to LINK, the following are the fields that are required to be entered:

  - Company common name;
  - Either the box# or street number, and street name; and
  - City.

  The optional fields in the subject database were: contact name, phone number, and fax number.

- LINK did not contain historical information about employer cases recommended for prosecution or employer time loss injury rates. Historical prosecution information was available to all Officers on the network outside of LINK. Instead of using time loss injury rates, the Officers used the WCB injury data for each employer that was included in LINK.

Information in the LINK Database Contained Approximately 70% of Employers in the Province, But Only 16% Had Been Contacted By WS&H

- The subject database, included in LINK, contained only employers that WS&H had had contact with in the past. In January 2006, there were approximately 7,400 employers included in the subject database in LINK, out of a possible 45,000 employers (~16%) in the province.
- In addition to the subject database, LINK included a WCB database that allowed Officers to view WCB data for approximately 70% of all employers in the province. However, the WCB database was primarily used only for reviewing claims history, and was only used on a limited basis for considering employers for inspection.

Employer Database Was Not Updated with Other Sources of Information

- WS&H did not perform any comparisons between its database, LINK, and other similar databases that may have been available within the province. Not performing comparisons to other databases limits the completeness of employers included in LINK and potentially the accuracy of the information contained in LINK.
- Although WS&H did not perform comparisons of its database to other sources, when it conducted targeted enforcement of a certain industry or sub-industry, alternative means of compiling employers, such as referencing the Yellow Pages, were used. See **Section 4.1.1** for an example of when WS&H used targeted enforcement.

Minor Data Inconsistencies Were Noted in LINK

- During the audit, we attempted to verify a sample of the statistics that were reported in Manitoba Labour's 2004/05 Annual Report with respect to WS&H. During this process, we noted some minor inconsistencies in the data in LINK. On two separate occasions we attempted to verify both the number of inspections conducted and the number of Improvement Orders issued during the year ended March 31, 2005. The numbers we obtained during our testing differed not only from those shown in the Annual Report but also between the two different dates the testing was performed as follows:

FIGURE 13

	Per LINK Dec.15/05	Per LINK Jan.30/06	Annual Report
Number of Inspections Conducted	5,144	5,146	5,194
Number of Improvement Orders Issued	4,293	4,319	4,241

Source: Manitoba Labour's 2004/05 Annual Report and per the LINK system.

5.2 POLICY AND PROCEDURES MANUAL

Audit Criteria

WS&H should have a comprehensive policy and procedures (P&P) manual, that is consistent with The Act and its regulations, and that is in use and updated regularly. Specifically, we reviewed whether:

- The P&P Manual included policies and procedures for conducting inspections, investigations, complaints and follow-up of Improvement Orders issued (**Section 5.2.1**);
- The P&P Manual identified the standard forms, checklists or templates that are to be used in performing inspections and investigations, and in following-up complaints and inspections (**Section 5.2.2**);
- One individual was responsible for updating the P&P Manual when there was a change to The Act or any of its regulations (**Section 5.2.3**);
- The P&P Manual was readily available to all staff to which it pertains (**Section 5.2.3**);
- The P&P Manual discussed when and how to recommend imposing a penalty for an offence, as well as when and how to impose an Administrative Penalty (**Section 5.2.4**);
- The P&P Manual identified a range of acceptable timeframes for employers to comply with Improvement Orders and when extensions should be granted (**Section 5.2.4**); and
- The P&P Manual included a requirement to develop a plan as to how frequently every employer in the province should be inspected (**Section 5.2.5**).

5.2.1 The P&P Manual Did Not Contain Complaint and Improvement Order Follow-up Procedures

Without sufficient guidance in the P&P Manual on how complaints and Improvement Orders should be followed-up and what information should be documented in LINK, there is an increased potential for inconsistency between Officers in their handling of complaints and Improvement Order follow-ups.

Observations

- The P&P Manual contained the following key pieces of information on performing inspections:
  - Procedures to follow before arriving at a workplace;
  - Procedures to follow upon arriving at a workplace;
  - Procedure with respect to who should accompany the Officer during the inspection; and
  - Policy as to when and how Stop Work Orders and Improvement Orders should be communicated to the employers and workers.
- On performing investigations, the P&P Manual contained:
  - Procedures to follow upon notification of an incident, including how quickly to respond;

  - Procedures to follow in securing the scene when the Officer arrives at the scene of the incident;
  - The timeframe within which to complete the investigation of a fatality, and what to do if this timeframe cannot be met;
  - Information on how to maintain the integrity of the evidence at the scene, and how to label and store evidence correctly; and
  - A policy as to when and how Stop Work Orders and Improvement Orders should be communicated to the employers and workers.

- The P&P Manual stipulated that an Officer must follow-up within 5 days of the compliance date passing if no indication had been received that the employer had complied with the Improvement Orders. The manual also indicated that documentation regarding compliance must be noted in LINK. However, the P&P Manual did not indicate what information should be recorded in LINK regarding compliance with Improvement Orders, or when and what form of Improvement Order follow-up should be used. For instance, when recording compliance, we noted that one Officer solely changed the status of the Improvement Order from "open" to "complied" in LINK without any further notations, while another Officer created a Re-Inspection Report, noted the details of how the Improvement Orders were addressed, the date of compliance, and changed the status of the Improvement Order from "open" to "complied". (See **Sections 5.2.4** and **5.6.1** for further details of the implications of this.)

- There was insufficient documentation in the P&P Manual about how complaints are to be handled once received. The P&P Manual addressed what information was to be recorded, what an Officer should do when they receive a complaint, and how the Client Services Officer should respond to the complaint. However, the P&P Manual did not address what an acceptable timeframe was for responding to complaints or how to prioritize complaints. WS&H did have a "Prioritization of Complaints" Policy that was commonly used to rank the priority of each complaint received, however this policy was not included in the P&P Manual.

5.2.2 Standard Forms Were Used, But Not All Appropriate Information Was Required or Consistently Obtained

Standard forms or templates are effective for ensuring that all critical pieces of information are documented consistently. Without the use of comprehensive forms, the results of inspections or investigations may not be adequately documented. Using comprehensive standard forms could increase the efficiency of WS&H by facilitating the review of information for any inspection or investigation.

Observations

Standard Forms Used

- WS&H did utilize some standard forms, such as Improvement Order Forms, Re-Inspection Reports and Right To Refuse Reports. However there was little control over what information was documented on

these forms. The Improvement Order Form and Right To Refuse Reports were both automatically filled in with the data that was contained in the subject database for the company. This information may include:

- Employer site name;
- Site description;
- Whether there is a safety and health committee;
- Phone and fax numbers;
- Whether there is a worker representative;
- Number of workers;
- Name of the union;
- Employer mailing address, physical location of worksite; and
- Management and worker contact.

In addition to the information that is automatically pulled from the subject database, before an Improvement Order Form can be published, there must be at least one Improvement Order and compliance date indicated. However, no other information is required before the Improvement Order Form can be published.

- The information contained in the Re-Inspection Report was identical to that included on the Improvement Order Form except that only the title for each Improvement Order was included. After initially being created, no other information was required before the Re-Inspection Report could be published.

Minor Deficiencies Noted with Standard Forms

- The P&P Manual dictated that, *"an Officer assigned to a mine shall inspect that mine or portions of it, every 4 to 6 weeks, and no less than 12 times per year if it is operating"*. During our review of 15 mine inspection files, we were unable to determine if inspections were performed at least 12 times per year on one of the mines as there was no tracking device in place to ensure that this policy was met.

- There is no tracking device in place, such as a form, to document that general inspections of mines were being conducted approximately monthly.

- WS&H has standard wording that automatically appears upon the creation of all Re-Inspection Reports. During our audit, it was noted that on numerous Re-Inspection Reports, in one section of the report the standard wording appeared as follows, *"the undersigned Inspector ... attended the above noted worksite location to reinspect"*. However, the remainder of the documentation in the Re-Inspection Report indicated that the Officer had conducted Improvement Order follow-up in another manner. (i.e., fax) Using standard wording in LINK creates the risk that Officers will have contradictory documentation of the form of follow-up thereby reducing the credibility of the documentation.

- None of the standard forms required that the Officer provide a general description of what took place while the inspection or investigation was conducted. For example, the Officer was not required to indicate

what time they arrived at the workplace, who they met with, who accompanied them on the inspection, or in-general the areas of the workplace that were toured.

No Checklist for Ensuring the Completeness of Work Performed

- Officers did not use checklists or a similar tool, while completing inspections and investigations as a means to ensure that all relevant sections of The Act and regulations have been considered.

5.2.3 The P&P Manual Was Readily Available, But Responsibility for Updating It Was Not Assigned

Without assigned responsibility for maintaining and updating the P&P Manual, the risk increases that the manual will not be updated on a regular basis or that multiple versions of the manual may exist at the same time.

Observations

- The P&P Manual was located on WS&H's network. All WS&H staff had access to the network, and therefore all relevant staff had access to the P&P Manual, and were therefore able to perform their duties in accordance with WS&H policies.
- WS&H's practice was that anyone in the division could recommend a change to a current policy or recommend a new policy. If management accepted a recommendation, the individual who made the suggestion would then be involved in the process of writing or re-writing the policy. Although the methodology used by WS&H for updating the manual was thorough, there was no documentation process in place to track the changes made and the authorization of these changes, by an appropriate individual.
- After a new policy or a revision to a policy had been approved, staff were notified by e-mail about the new policy. The e-mail included an attachment with the new policy so that an Officer could print the new policy and update their hard copy of the P&P Manual if they so wished.
- The P&P Manual as of November 2005 had been recently reviewed. Three of the 18 sections of the manual were revised in June 2005, whereas the other 15 sections had been reviewed between May 2003 at the earliest, and November 2002 at the latest.

5.2.4 There Was Sufficient Guidance on How to Impose An Administrative Penalty And When An Offence Should Be Recommended For Prosecution. But There Was Insufficient Guidance in the P&P Manual on Improvement Order Compliance Dates and Compliance Extensions

Without guidelines as to what are acceptable timeframes for employers to comply with Improvement Orders, inconsistency could result in terms of the length of time given to comply for the same types of Improvement Orders.

Another policy that was not in place was a policy as to when extensions can and/or should be granted. Without a policy as to when extensions can and/or should be granted, there is a risk that extensions could be granted for excessively long periods. This could potentially affect the time that workers are exposed to unsafe conditions.

Observations

- The P&P Manual adequately addressed when and how an offence should be recommended to the Attorney General for prosecution, and when and how an Administrative Penalty should be recommended for imposition. The P&P Manual included a list of criteria, one of which must be met, in order for an offence to be recommended to the Attorney General for prosecution. As well, the P&P Manual outlined steps that should be taken with respect to issuing Administrative Penalties.
- The P&P Manual did not include guidelines on what would be acceptable timeframes for employers to comply with Improvement Orders. Without such guidance, inconsistencies across Officers in terms of the length of time given to comply for the same Improvement Order could result. See **Section 5.6.1** for further analysis with respect to inconsistencies in timeframes for compliance with Improvement Orders.
- The P&P Manual did not provide any guidance as to when it was appropriate for an Officer to provide an extension on the compliance date. Without a policy as to when extensions can and/or should be granted, there is a risk that extensions could be granted for excessively long periods, and without adequate justification. This could potentially affect the time that workers are exposed to unsafe conditions.

5.2.5 There is No Documented Plan for Inspection of All Employers in the Province

Without having a plan with respect to how frequently employers in the province should be inspected:

- Not all employers in the province will be inspected;
- After an employer is inspected once, it may never be inspected again; and
- There is a risk that a high-risk employer, who may not have had accidents in the past or who may not have reported them, may never be inspected, even though they are at a higher risk of having an incident.

Observation

- The P&P Manual did not discuss the requirement that a plan be developed with respect to how frequently every employer in the province should be inspected. Consequently, WS&H did not have a plan as to how frequently each employer should be inspected by WS&H.

5.3 RESPONSES TO INCIDENTS AND COMPLAINTS

Audit Criteria

Responses to incidents and complaints should be prompt. Specifically, we reviewed whether:

- All fatal accidents or serious injuries reported to WS&H were investigated immediately upon notification to ensure the preservation of all evidence (**Section 5.3.1**); and
- All complaints were investigated within a reasonable time period so that WS&H demonstrated concern about health and safety in the workplace, and so that the public would not be deterred from reporting complaints to WS&H (**Section 5.3.2**).

5.3.1 Fatal Accidents and Serious Injury Response Times Were Not Consistently Tracked by WS&H to Enable Us to Conclude That Responses Were Immediate Upon Notification

Tracking and monitoring response times would allow WS&H to ensure that response times are reasonable. Without an Officer investigating a fatality or serious injury immediately, key evidence may be moved or destroyed, thereby impeding WS&H's ability to investigate the accident properly and possibly affecting the outcome of any pending prosecutions.

Observations

- WS&H receives notification about fatal accidents, serious injuries, and other serious incidents in the following ways:
  - Through the "911 Emergency System". The Police, RCMP, and Fire Department have a policy to notify WS&H of incidents;
  - Employers call WS&H's main switchboard or after hours telephone number;
  - Employees of WS&H may hear a report on the radio and inform their supervisors; and
  - The hospital may notify WS&H. (WS&H staff advised that this was rare).
- Management advised that their policy is to respond immediately upon notification of a serious incident so long as there is still a significant risk of injury or there is evidence to be preserved. In instances where WS&H is notified when there is no longer an imminent risk of injury or evidence to preserve, it may take half a day for an Officer to arrive on scene.
- Although the 911 policy is that WS&H is to be informed by Police in a timely manner of an incident, if the incident is also the subject of a criminal investigation, WS&H may not be notified immediately. For instance, in February 2006 a convenience store worker was shot and

killed at approximately 9:30pm and WS&H was not made aware of the incident until approximately 10:00am the next morning, as this was a criminal investigation. However, in instances such as this, WS&H would receive the Police documentation to assist with their investigation, which management advised is adequate.

- To determine whether WS&H responded to serious incidents immediately upon notification, we reviewed a sample of 75 investigations (or 10%) that occurred in the fiscal year ended March 31, 2005 to determine the average amount of time between WS&H receiving notification of the incident and an Officer arriving on scene. From our review of the 75 investigations, we determined the following:
  - Only 16% had the full details as to the date and time the Officer arrived on scene documented;
  - 34% had the date that the Officer arrive on scene documented but not the time;
  - 27% were not investigated by WS&H as the employer investigated the incident and provided WS&H with a report;
  - 16% had no indication that WS&H attended the scene;
  - 3% were not attended by an Officer as follow-up by WS&H was not required; and
  - 4% were not attended by an Officer and there was no indication of any follow-up.

  For the 16% investigation files tested that did have both the time and date that the Officer arrived indicated, the average response time was approximately one hour. However, 25% of these files, had errors in the data recorded. As a result of these errors in recording the time an Officer arrived on scene or the time of an incident, these files had a negative response time. For example, for one of the investigation files reviewed, the time of the incident was recorded as 1:30 pm; however the time that the Officer arrived on scene was recorded as 11:00 am, the same day.

- During our detailed review of 15 investigation files, we also noted one instance where a serious incident was reported to WS&H and where no action was taken until a month later when a similar incident was reported at the same workplace.

5.3.2 Response to Complaints Received Was Not Timely in Comparison to the "Prioritization of Complaints" Policy

Without a timely response to complaints, within established response targets, WS&H may create the appearance of apathy with respect to health and safety in the workplace, thereby reducing their overall effectiveness. In addition, a tardy response to complaints may deter the public from informing WS&H of concerns about health and safety in the workplace in the future.

Observations

- WS&H had a "Prioritization of Complaints" Policy that was commonly used to rank the priority of each complaint received. Complaints could be classified into three different categories that all corresponded to varying lengths of time allowed for action to be taken as follows:
  - *"Class 1" Hazard (Major) – Action to be taken within 24 hours;*
  - *"Class 2" Hazard (Serious) – Action to be taken within 1 week; and*
  - *"Class 3" Hazard (Moderate) – Action to be taken within 2 weeks.*
- To determine whether complaints were being followed-up in a timely manner we conducted two tests. First, we reviewed a sample of complaints that were received in the fiscal year ended March 31, 2005 to determine the average amount of time between WS&H receiving the complaints, and an Officer taking action to investigate the complaints. From this review, we determined that on average, the response time for a complaint received was 14 calendar days.
- Second, we obtained a report from LINK, as of January 3, 2006, of the number of complaints outstanding that had had no action to date. The total number of complaints that had been received with no action taken as of January 3, 2006 was 52. Of these 52 complaints, the oldest was received on May 20, 2004 and the overall average number of days outstanding was 90 days. Based on this information, complaints were not always followed-up in accordance with the "Prioritization of Complaints" Policy.

5.4 PERFORMANCE AND DOCUMENTATION OF INSPECTIONS

Audit Criteria

Inspections should be thoroughly conducted and documented. Specifically we reviewed whether:

- Inspections were conducted according to the inspection plan as discussed in the P&P Manual (**Section 5.4.1**);
- All inspections were performed on an unannounced basis (**Section 5.4.1**);
- All details of an inspection were well documented and maintained on file (**Section 5.4.2**);
- Inspections were performed in accordance with related policies and procedures (**Section 5.4.2**);
- Inspections were performed by Officers that have been adequately trained (**Section 5.4.3**);
- Evidence was obtained to support all major findings (**Section 5.4.4**); and
- Formal communication from WS&H to employers of their inspection findings were signed by either the employer or witness and WS&H (**Section 5.4.4**).

5.4.1 Inspections Were Not Conducted According to a Plan But Were Mainly Conducted on An Unannounced Basis

By not having a plan for inspecting all employers in the province there is the risk that some employers may not see the need to follow The Act and its regulations.

Without the element of surprise in place for all inspections, including mines, an Officer may not get an accurate sense of the way the workplace operates on a regular business day, therefore potentially giving the Officer a false sense that the workplace is in compliance and that workers in the workplace are safe.

Observations

No Inspection Plan for Non-High-Risk Employers

- WS&H did not have an annual work plan as to what inspections will be performed for employers or industries not identified as high-risk.
- WS&H officials advised, that as a result of limited resources, WS&H prioritized its inspection/investigation resources in the following manner:
  - Emergencies;
  - Prioritizing Initiatives;
  - Priority Firms (Employers) and Sector Focus; and
  - Random Inspections.
- WS&H chose not to use an annual work plan of inspections to be performed, as it believed that it would be too difficult to predict how many resources would be consumed by the other activities and impact an annual work plan.

Inspections Mainly Performed on An Unannounced Basis

- WS&H had a policy that, *"Routine inspections will be unannounced to all workplace parties, except where a pre-arranged condition or presence of a particular person is required"*. However, there were occasions that an employer was aware in advance of an inspection.
- We contacted a sample of Officers to determine whether inspections were always performed on an unannounced basis. Of the Officers contacted, 90% indicated that they were aware of rare circumstances when an employer was made aware, in advance, that an Officer was going to be performing an inspection, even though the prior notification was not required. Management also indicated that this was rare, and estimated that this takes place approximately 1% of the time.
- The Officers contacted indicated that there were certain circumstances that prevented an Officer from being able to attend a workplace without prior notification such as:
  - *When an Officer must gain access to a workplace that is "locked down";*
  - *When an Officer needs to inspect a specific work activity and therefore needs to ensure the activity is actually occurring; and*

- *When an Officer is attending a hog barn, and due to bio-security protocol the employer requires prior notification.*

- Both Mines Officers that were contacted indicated that it is common practice for the Officer to announce in advance their intent on performing an inspection at the mine the next day. The Officers indicated that although the employer would be made aware of an inspection occurring at the mine, they would not be apprised of the section of the mine that the Officer would be inspecting.

5.4.2 Inspections Were Well Documented, But Not Always Performed in Accordance with the P&P Manual

There may be consequences of not performing inspections in accordance with the Policy and Procedures Manual:

- Inspections may not be performed on a consistent basis; and
- Employers may dispute Improvement Orders if adequate evidence is not obtained.

Observations

- We identified six key policies and procedures for performing inspections that would enable us to determine whether inspections have been performed in accordance with the P&P Manual as follows:
  - *An Improvement Order must be adequately substantiated with evidence (Policy #B3);*
  - *When an Improvement Order is issued it must be in the proper form, created in LINK (Policy #B4);*
  - *When an Improvement Order is issued it must have time limits for corrective action (Policy #B4);*
  - *Officers must document on the LINK application whether they have followed up with the workplace to ensure compliance with a requirement contained in an Improvement Order (Policy #C2);*
  - *In the case of mines, an Officer assigned to a mine shall inspect that mine or portions of it, every 4 to 6 weeks and no less than 12 times per year if it is operating (Policy #C1); and*
  - *A Client Service Representative or an Officer shall ensure that the record made contains essential information about the workplace such as: individual, corporate, and business names, addresses, postal codes, phone numbers and the number of employees at the place of employment. (Policy #C2)*
- To determine whether key pieces of information were recorded and maintained on file with respect to inspections, we conducted a review of 100 inspection files prepared after April 1, 2004. Of the 100 files reviewed, 92 contained all of the data that we felt was pertinent to an inspection being well documented, such as :
  - Name of employer;
  - Location of inspection;
  - Sub-industry code (SIC);

- Date of the inspection;
- Name and telephone number of contacts;
- Number and details of Improvement Orders issued; and
- Reason for the visit.

The deficiencies noted in the eight files that did not contain all of the pertinent information were as follows:

- One file did not have an SIC indicated; and
- Seven files did not have a telephone contact number recorded.

- We also reviewed those 100 inspection files to determine whether inspections were being performed in accordance with the P&P Manual. Of the 100 files reviewed, 41 were not prepared in accordance with the P&P Manual. The discrepancies were noted in the following areas:

  - 26% of files included at least one Improvement Order for which there was insufficient documentation of observations to support the issuance of the Improvement Order;
  - 10% of files were not followed-up, and documented appropriately in LINK; and
  - 8% of files did not have all pertinent information recorded.

  Of the 100 inspection files reviewed, there were a total of 744 Improvement Orders issued, of which 8% did not have documentation of the Officers' observations to support the issuance of the Improvement Order.

5.4.3 Recently Hired Qualified Officers Received Sufficient Training, More Timely Performance Reviews Were Needed

Performance reviews being conducted and documented for new Officers prior to the Officers beginning to perform inspections without constant supervision, confirms whether an Officer is sufficiently trained and ready to begin conducting inspections without constant supervision.

Performance reviews are critical to providing useful and timely feedback to all Officers with respect to what aspects of their work are being performed well, and what areas could be improved upon. Performance reviews would be useful for all Officers to ensure that when needed, they can update their knowledge with supplemental training.

Observations

Adequate Qualifications

- To determine if the Officers performing inspections had adequate qualifications, we reviewed the resumes of the five most recently hired Officers. From our review of the resumes, it appeared that these Officers had appropriate and sufficient education and/or work experience to be hired as Officers.

Sufficient Training Received, But Not Always Documented

- Management advised that when a new Officer first begins working with WS&H, the Officer must obtain extensive training for approximately six months. During this time, the Officer is required to attend several classroom training sessions as well as inspections and investigations with a more senior Officer.
- From our review of training records, we noted that after commencing work with WS&H, all five of the new Officers were scheduled to attend classroom-style training sessions. However, documentation to support the training that was received was only available for four of the five Officers.
- Of the four Officers for which documentation was available to support the training they received, three attended all aspects of the training, while the fourth Officer did not attend the "Construction" training. The Officer that did not attend the "Construction" training was hired as a Mines Inspector – Electrical, therefore it is reasonable that the Officer did not attend the "Construction" training.
- The material covered, for the various sections of the training, appeared appropriate.
- Once Officers begin to perform inspections of workplaces with the supervision of a more senior Officer, there are "Period of Time (Field) Evaluations" done and kept on file.

Inadequate Timing of Performance Reviews

- Management advised that the only performance reviews that are conducted are for new Officers.
- From our review of the performance reports for the last five Officers hired by WS&H as well as information provided to us by these Officers, none of the performance reviews were completed prior to the Officers beginning to work independently. In addition, three of the five performance reviews were not completed until after we requested to review the performance reviews.

5.4.4 Information on Improvement Orders was Not Always Sufficiently Descriptive. In Most Cases Formal Communication Between WS&H and Employers Did Not Contain Signatures.

Without signatures from the employer and worker representatives on Improvement Order Forms, there is no evidence that the employer received the documentation and is therefore aware of the Improvement Orders issued and the related deadlines.

As well, by not having documented evidence to substantiate findings, WS&H may encounter a situation in the future where it is difficult to enforce their Improvement Orders on grounds of a lack of evidence that may have been collected a while back in time. This could lead to more resources being used to settle appeals rather than performing additional inspections.

Observations

Lack of Documentation on Improvement Orders Issued

While an Officer performs an inspection of a workplace, the Officer keeps a personal log book to record contraventions noted, and other items noted during the inspection. It is based on the information noted in this log book that the Officer then creates an Improvement Order Form. The Officers do not generally use any other means of documenting contraventions, such as through the use of digital pictures.

From our review of the 100 inspection files in **Section 5.4.2**, there were a total of 744 Improvement Orders issued, of which 8% did not have documentation of the Officers' observations to support the issuance of the Improvement Order.

Lack of Signatures on Formal Documentation

- Per our review of the 100 inspection files, 97 did not have signatures from both the Officer and either the employer or witness on all formal communication between WS&H and the employer or witness. (i.e., Improvement Order Forms, Witness Statements).
- Management advised that the policy of WS&H was that formal documents between WS&H and employers need not be signed by both the Officer and the employer. In addition, correspondence received from employers need not be on file, but rather the content of these reports should be recorded in LINK. For example, if an employer faxes a Compliance Report to WS&H that details what steps have been taken to comply with Improvement Orders, the Officer would record the details indicated on the report in LINK. Once the details have been recorded in LINK, these forms would be destroyed, regardless of whether these reports have signatures from the worker and employer representatives.

5.5 PERFORMANCE AND DOCUMENTATION OF INVESTIGATIONS

Audit Criteria

Investigations should be thoroughly conducted and documented. Specifically we reviewed whether:

- All details of an investigation were well documented and maintained on file (**Section 5.5.1**);
- Investigations were performed in accordance with related policies and procedures (**Section 5.5.1**);
- Investigations were performed by Officers that had been adequately trained (**Section 5.5.2**);
- Evidence was obtained to support all major findings (**Section 5.5.3**); and
- Formal communication from WS&H to employers of their findings, and Witness Statements, were signed by both the employer/witness and WS&H (**Section 5.5.3**).

5.5.1 Critical Incident Investigations Were Well Documented and Were Generally Performed in Accordance with the P&P Manual. Less Critical Incident Investigations Were Not Always Well Documented Nor Consistently Performed in Accordance With the P&P Manual.

Without well documented investigation files, the efficiency and effectiveness of WS&H and its ability to support the enforcement process may be impacted.

There are potential impacts when investigations are not conducted in accordance with the Policy and Procedures Manual including:

- All aspects of an investigation may not be properly completed;
- Investigations may not be completed in a timely manner;
- Scenes may not be properly secured and therefore evidence may be tampered with;
- Parties in non-compliance may not be held accountable for their actions due to insupportable findings; and
- Incidents may not be investigated immediately or as soon as possible.

Observations

- We identified six key policies and procedures with respect to performing investigations that would enable us to determine whether investigations have been performed in accordance with the P&P Manual as follows:
    - *All complaints, referrals or notifications, both verbal and in writing must be documented in the LINK application as well as the Officer's response to each (Policy #D1);*
    - *Client Services shall record the applicable and available information: including name of caller with call back numbers, name of the employer, SIC & Employer WCB#, location of employer and worksite involved, number of employees at the worksite, call back numbers for employer/supervisor, police officer, injuries to victims where applicable, brief paragraph summary of what the issue is, answering who, what, where and when, potential witnesses, and in the case of a fatality, serious accident, or right to refuse, the appropriate Officer, Supervisor, Manager and /or Director must be immediately notified (Policy #D2);*
    - *In the case of a notification of a fatality, two investigators will respond to the incident, unless otherwise directed by the Unit Manager/Director (Policy #D3);*
    - *Officers shall complete the investigation and Incident Investigation Report within three months of the date of the incident (Policy #D3);*
    - *The scene of a fatality or serious injury shall remain unaltered, except for the purpose of saving life or relieving human suffering until an officer has completed an investigation surrounding the accident. Officers must not release the scene until all pertinent physical evidence has been collected and recorded (Policy #D3); and*

- *If prosecution is not anticipated, the information for incident investigation shall be documented in the LINK application in the "Incident Investigation Summary Report" format. If prosecution is anticipated the report must be captured in the LINK application "Incident Investigation Report" (Policy #D3).*

- To assess the adequacy of documentation of investigations, we conducted a review of 15 investigation files prepared after April 1, 2004. From our review of 15 investigation files, we noted that investigations that relate to more critical incidents or fatalities are conducted thoroughly, promptly and generally in accordance with the P&P Manual. However, investigations that deal with less serious incidents are not evidenced as having been conducted in accordance with the P&P Manual. Of the 15 investigation files reviewed, 67% of the files were not prepared in accordance with the P&P Manual. Some of the differences from policies and procedures noted were as follows:

  - 2 investigations were not completed within 3 months;
  - 1 fatality investigation file noted that the Officer did not formally instruct to keep the scene secured until further notice;
  - 6 investigation files were not documented using the appropriate form in LINK;
  - 2 investigation files did not have the means of notification as well as the method the Officer used to respond, noted in LINK; and
  - 2 investigation files did not have all applicable information recorded by the Client Services Officer.

- Investigations that dealt with less serious incidents were not documented as thoroughly. Of the 15 files reviewed, 2 were of fatalities while the remainder of the investigations were of serious injuries, near misses, and right to refuse investigations.

- 5 of the 15 investigation files reviewed contained all of the documentation that we felt was pertinent to an investigation being well documented. The details of the information missing from the other 10 files was as follows:

  - 7 files did not have the date and time the Officer arrived on scene to investigate;
  - 6 files did not have any record of how the scene was secured to preserve evidence;
  - 3 files did not have the SIC recorded;
  - 3 files did not have a phone number for management recorded; and
  - 3 files did not have the number of workers recorded and/or the name of the worker representative.

  One of the fatality investigations is included in all the above file documentation deficiencies, with the exception of not having any record of how the scene was secured to preserve evidence.

5.5.2 Experienced Officers Perform Full Investigations

Observations

- WS&H management advised that when WS&H is notified of a serious injury or fatality that needs to be investigated, one of the Officers that would normally be responsible for the sub-sector would perform a preliminary investigation. Once the preliminary investigation was completed, the Officer would then return to the office to inform management of their findings. Based on the level of risk and complexity of the incident, management would determine whether the investigation would be handed over to a "lead investigator".
- A "lead investigator" is an Officer that has demonstrated proficiency and an interest in performing investigations. These Officers are always involved in performing full investigations of fatalities and serious incidents. Lead investigators are also the only Officers that investigate discriminatory action complaints.
- Management advised that past history has shown that the more an Officer participates in conducting investigations, the better an Officer becomes at performing investigations. Therefore, by designating a few Officers to deal with more complex investigations on a more regular basis, the more proficient these Officers become at performing investigations.

5.5.3 Evidence Was Generally Available to Support Improvement Orders Issued During Investigations But There Were No Signatures on Formal Documentation

If a Witness Statement included a Charge and Caution, but the Witness Statement was not signed by the witness, this could result in Manitoba Justice not having adequate evidence to prosecute as its ability to introduce the Witness Statement into a court of law may be impacted.

WS&H indicated that while the lack of a signature on a statement may be of some concern for prosecution purposes, Manitoba Justice has a number of avenues available to introduce a statement in court, including the calling of the Officer to provide testimony on the circumstances of the taking of the statement.

If Manitoba Justice decides to prosecute a file and there is inadequate evidence to support the claims, an employer may not be deterred as desired.

Observations

Documentation Was Available to Support Improvement Orders Issued

- During our review of 15 investigation files, we noticed that the level of evidence obtained for the investigations of more critical incidents, such as fatalities, was thorough. The level of detail documented for these incidents was appropriately more thorough than the less serious incidents that WS&H investigated.

- However, with respect to the 15 investigation files we reviewed, we noted that two Improvement Orders issued did not have documentation of the Officers' observations to support the issuance of the Improvement Order. This represents only 6% of all Improvement Orders issued during the 15 investigations reviewed.

Lack of Signatures on Formal Documentation – including Witness Statements

- From our review of the 15 investigation files, we noted that 12 (80%) did not have signatures on all formal communication between WS&H and the employer (i.e., Improvement Order Forms, Witness Statements, etc.).
- Management advised that in terms of legality, documentation that flows between WS&H and an employer or a witness need not be signed. It is the opinion of WS&H management that whether or not an Improvement Order Form or a Witness Statement was signed by both the Officer and the worker and employer representatives or a witness, would have no impact on its admissibility into a court of law. WS&H cannot force an employer or a witness to sign a document.
- WS&H management also advised that the only time that a Witness Statement not being signed could create difficulty during the prosecution process was if the "Charge and Caution" had been read to the witness before taking their statement. The "Charge and Caution" is a statement advising the witness of their rights to legal counsel and a warning that they need not say anything.
- During our review of the 15 investigation files, we noted one instance where a Witness Statement was taken but not signed by the witness despite the fact that the "Charge and Caution" was read to the witness.

5.6 ENFORCEMENT OF THE ACT

Audit Criteria

The enforcement provisions of The Act (Improvement Orders, Administrative Penalties and offences) should be appropriately utilized. Specifically we reviewed whether:

- Improvement Orders were issued when non-compliance with The Act or its regulations was noted (**Section 5.6.1**);
- Timeframes provided to employers to comply with Improvement Orders were consistent across Officers and employers (**Section 5.6.1**);
- Improvement Order follow-ups were conducted within a short timeframe after the date provided to the employer for required compliance (**Section 5.6.2**);
- Follow-up procedures such as phone calls and re-inspection were sufficiently applied and documented (**Section 5.6.2**);
- All penalties outlined in The Act were reviewed periodically to ensure they were substantial enough that all employers would view the fine/penalty as significant and to be avoided (**Section 5.6.4**);
- WS&H had an appropriate appeals process in place (**Section 5.6.3**);
- WS&H recommended prosecution when offences were committed under The Act (**Section 5.6.6**);
- WS&H utilized their ability to impose an Administrative Penalty when Improvement Orders were not complied with (**Section 5.6.5**);
- WS&H recorded all Administrative Penalties imposed on employers (**Section 5.6.7**);
- An individual other than the Officer issuing the Improvement Orders was responsible for maintaining a list of all Administrative Penalties that were due and recording payment of fines upon payment (**Section 5.6.7**); and
- Management reviewed the listing of overdue Administrative Penalties on a regular basis noting fines that had been outstanding for an extended period (over 30 days) and took appropriate actions (**Section 5.6.7**).

5.6.1 Improvement Orders Were Not Always Issued and Timeframes for Compliance with Improvement Orders Were Inconsistent

Without consistency in when an Improvement Order is issued to employers for certain deficiencies, fairness in approach may be questioned. In addition, by strictly noting deficiencies as "Additional Issues" rather than actually issuing Improvement Orders, the LINK database would not have any record that an improvement was recommended, and an employer may consider those items strictly noted as "Additional Issues" as less important.

Without guidelines as to what constitutes acceptable timeframes for compliance with the various types of orders, there is a further risk of inconsistent treatment of employers.

Observations

Improvement Orders Were Not Always Issued When Contraventions Were Noted

- From our review of 100 inspection files, for 29, or 29% of those files, we noted items of non-compliance for which Improvement Orders were not issued. Some of the contraventions noted, for which no Improvement Orders were issued, were as follows:
  - *Not "Reporting Serious Incidents";*
  - *"It was noted during the Inspection that two truck trailers were dollied at the loading bays and the trailers were not chocked or blocked to prevent movement while fork-lifts moved material in and out of the trailers. The motion of the fork-lifts could cause the trailers to move or roll and the blocking is an aid to reduce or stop the movement. The wheel chocks were available and laying against the building. An Improvement Order regarding this has been issued in the past.";*
  - *"Bathroom should be cleaned and maintained";*
  - *"Install an emergency eyewash station in project trailer";*
  - *"Areas of the workplace were identified with noise levels above 98dBA – ensure that mandatory hearing protection is being enforced"; and*
  - *"Procedure in working on height excess of 2.5 metres, i.e., fall protection, harness, guard rails".*
- Management advised that an Improvement Order may or may not be issued when a contravention is noted. An Officer may choose to only issue Improvement Orders for the more significant contraventions so that the employers will focus on these, rather than the more minor contraventions. However, when a contravention is noted and an Improvement Order is not issued, it would still be listed on the Improvement Order Form as an "Additional Issue".

Inconsistencies in Timeframes for Employers to Comply with Improvement Orders Issued

- To determine whether the amounts of time given for employers to comply with Improvement Orders were consistent across Officers and employers, we obtained an export of data from the LINK database of all Improvement Orders issued since January 1, 2000. From this data, we removed all Improvement orders that were served prior to April 1, 2004. The remaining data was then narrowed down to the 12 most common types of written Improvement Orders.
- Upon reviewing the data, it was evident that the length of time given to comply with a given order not only varied across Officers but also within the same Officer. One example of the inconsistencies noted, was for the Improvement Order title, "EMERGENCY EYE WASH EQUIPMENT". Within the data analyzed, there were 172 of these Improvement Orders issued, with the shortest length of time to comply being 1 day, and the longest length of time to comply being 117 days. In addition, one Officer that issued 10 of these orders allowed the various employers between 13 and 55 days to comply with the order.

5.6.2 Improvement Order Follow-up was Timely, But the Method of Follow-up was Not Always Sufficient, Nor Well Documented

Following-up on Improvement Orders issued within a reasonable timeframe helps WS&H demonstrate that it takes Improvement Orders seriously and encourages the employers to do the same.

Without the appropriate method of follow-up being chosen and without the proper documentation to support the follow-up done, it is difficult to ascertain whether the Improvement Orders were in fact complied with or not.

In addition, not completing Re-Inspection Reports for Improvement Orders could lead to a lack of documentation to support a file. If an incident were to occur while an Improvement Order was pending, it may create the appearance that WS&H did not adequately follow-up on the noted deficiency, even though they had in fact conducted the Re-Inspection.

Observations

- To determine whether Improvement Orders issued were being followed-up within a reasonable timeframe, we calculated the average number of days between the follow-up date and the original compliance due date for all Improvement Orders issued for 100 inspection files. The average number of days between the compliance due date and the date of follow-up was 10 days. Given that an employer is given 7 days after the date of compliance to provide WS&H with a report on how the Improvement Orders have been complied with, the average of 10 days appears reasonable.
- During our review of 100 inspection files, we also assessed whether or not the form of follow-up was sufficient, and whether the follow-up was sufficiently documented. Of the 100 files reviewed, 70 were either not followed-up in a sufficient manner and/or the follow-up was not documented sufficiently.
- Some examples of how the method of follow-up was not sufficient or how documentation was lacking are as follows:
    - No Re-Inspection Report was completed for several files even though the Improvement Order status in LINK was noted as "complied";
    - Follow-up was conducted through the receipt of a faxed in Compliance Report from the employer when the Improvement Orders were of a visual nature, therefore physical re-inspection would have been best for ensuring compliance; and
    - Follow-up was conducted through the receipt of a fax or mailed in Compliance Report. However the Compliance Report received was not maintained on file, therefore there is no evidence that the report was in fact received.

5.6.3 An Appropriate Appeals Process Was In Place

An appropriate appeals process enables small disputes with respect to orders etc. to be settled outside the court system thereby improving the efficiency of the process.

Observations

- WS&H had an appeals process in place so that a person affected by an order or decision of an Officer could appeal the order or decision of the Officer. Management advised that orders and decisions of Officers were appealed infrequently as noted in **Figure 7**.
- The appeals process is outlined in Sections 36 through to 39 in The Act. The key details of the appeals process are as follows:
  - *How to Appeal* – The person appealing shall send a written notice to The Director within 14 days after the date of the order or the decision, or within a further period the director may allow;
  - *Decision* - The Director must make a decision about the appeal and give written reasons within a reasonable timeframe after receiving the appeal notice;
  - *Appeal to the Board* - Any person directly affected by an order or decision by The Director may appeal it to the Manitoba Labour Board; and
  - *Right to be Heard* - At the hearing the appellant has an opportunity to be heard, make a presentation, or to present evidence.
- At the bottom of an Improvement Order Form, it clearly indicates the following with respect to who is entitled to appeal, to whom the appeal must be made, and the relevant section of The Act:
  - *"Anyone directly affected by this order has the right to appeal to the director within 14 days in accordance with Section 37 of The Act."*
- From our review of the relevant sections of The Act, the appeals process was appropriate as:
  - The appellant has a reasonable amount of time to appeal an order;
  - Information as to how to appeal is easily accessible; and
  - The appellant has an opportunity to be heard.

5.6.4 Offence Penalties Were Recently Reviewed

By reviewing the maximum penalties that can be imposed on a regular basis, WS&H will be able to ensure that all employers would perceive the fines/penalties as significant, thus preventing employers from becoming nonchalant and maintaining their effectiveness.

Observations

The Offence Penalty Amounts Were Last Updated in 1997

- The Act was initially enacted in 1977 with a penalty for a first time offence of $5,000. The maximum penalty amount was subsequently amended in 1983 to $15,000 and in 1997 to $150,000.

- In 2001, the Minister of Manitoba Labour announced a strategy to reduce workplace injuries and asked that a Review Committee, consisting of members of The Council, conduct public consultations on the strategy. One of the 62 recommendations made by the Review Committee in January 2002 was that *"The Act and its administration be reviewed every five years in consultation with employers, labour, safety and health organizations, and other interested organizations"*.
- WS&H responded to this recommendation from the Review Committee by amending The Act with the following new subsection:
  - *"**Review every five years***
    16(3) At least once every five years, the council shall review this Act and its administration and report its findings and recommendations, if any, to the minister."
- Management advised that in the fiscal year ended March 31, 2002 the Review Committee conducted a general review of The Act and thereby reviewed the penalty amounts for offences.

5.6.5 Administrative Penalties Have Never Been Imposed

Without application of the Administrative Penalty on employers when it is justified, the effectiveness of this penalty as a deterrent diminishes greatly. Perhaps if Administrative Penalties are issued or it is known that they would be issued, the employers would take the desired corrective action quicker to rectify deficiencies before an injury occurs.

Observations

Administrative Penalties Have Never Been Imposed

- One of the shortcomings identified during the review of The Act in 2001, was that, besides pursuing prosecution, there was no effective means of ensuring compliance with Improvement Orders. The recommendation made by the Review Committee appointed by the Minister of Manitoba Labour with respect to this deficiency was that, *"Alternative Sentencing Provisions be put in place, enabling judges to order that financial penalties be directed to workplace safety and health promotion, education and training programs"*.
- In response to this recommendation, The Act was changed in August 2002, to allow for an Administrative Penalty to be imposed for non-compliance with an Improvement Order. The maximum and minimum amounts of the penalty are $5,000 and $1,000, and all funds received from Administrative Penalties are to be used for the *"purpose of educating the public on matters relating to workplace safety and health"*. Although this change to The Act took effect 90 days after The Act received Royal Assent, Administrative Penalties have never been imposed.
- WS&H put in place *Administrative Penalties Procedures for Notification and Collection of Fees* (as per **Appendix B**) to meet their responsibility under Section 53.1 of The Act.

- Although WS&H has not imposed an Administrative Penalty to date, WS&H has sent Administrative Penalty letters to various employers that have not complied with Improvement Orders. WS&H's policy was to send out Administrative Penalty letters to employers when seven days had passed since the compliance date of each Improvement Order on the Improvement Order Form. The letter reminded the employer of their duty to comply with the order(s) and indicated that if they did not comply with the Improvement Order(s) that had been issued, that an Administrative Penalty may be imposed.
- As of January 3, 2006 a total of 606 warning letters (see **Appendix C** for sample letter) had been sent to various employers that had not complied with Improvement Orders stating that non-compliance could lead to them receiving an Administrative Penalty. At the time these letters were sent, WS&H was already in a position to actually impose an Administrative Penalty under Section 53.1 of The Act. With respect to the 606 letters that were sent to employers, there were a total of 1,885 Improvement Orders that had not been complied with. Under Section 53.1(4) of The Act, this translates into the potential collection of revenue by the Province of between $1.9 million and $9.4 million, dependent on the penalty applied.
- From our review of all investigations that were conducted between April 1, 2004 and February 1, 2006, we noted that 60 companies who had received a warning letter subsequently had at least one serious injury investigation performed at their workplace.
- During our review of 15 investigation files, we noted one instance where a serious injury occurred at a workplace as a result of a structural beam not being anchored appropriately. This incident occurred despite an Improvement Order having been issued for this deficiency, and a warning letter having been sent to the employer nearly two weeks prior to the incident.
- WS&H has not determined when it will begin to issue Administrative Penalties.

5.6.6 Data Was Not Available To Be Able To Confirm The Number of Referrals to Manitoba Justice For Prosecutions When Offences Were Committed

Observations

- WS&H had criteria outlined in their P&P Manual as to when to recommend that a file be forwarded onto Manitoba Justice for their review. The criteria were when:
  - *"A person's failure to comply with the Legislation contributed to an incident causing a serious injury or fatality;*
  - *A person's failure to comply with the Legislation (although not contributing to an incident causing a serious or fatal injury).*

contributed to a very serious risk of injury or illness to one or more persons;

- *A person repeatedly refuses to comply with an Improvement Order without reasonable explanation, other avenues to enforce compliance are not or are no longer reasonably possible; or*
- *A person consistently or flagrantly contravenes a section of the Act or Regulations."*

- Management advised, that if one or all of the above criteria were met, then WS&H would recommend that the file be forwarded onto Manitoba Justice for their review. At that point, Manitoba Justice would then review the details of the case against their own criteria and determine whether to prosecute.
- WS&H's informal policy was that an Administrative Penalty should be imposed when there has been non-compliance with an Improvement Order. However, if there has been a series of non-compliance with Improvement Orders or a serious incident has occurred, then WS&H would recommend that the file be forwarded onto Manitoba Justice for their review. Management advised that one additional factor that is taken into consideration is whether or not the employer has shown due diligence.
- WS&H did not keep a record of all cases that were recommended to Manitoba Justice for prosecution, but it did maintain a list of all prosecutions that have taken place and the results. WS&H also maintained a list of files under review for purposes of prosecution and all prosecutions that were currently in the queue. As matters were completed they were removed from the list.
- Given that WS&H did not keep track of all cases that were recommended for prosecution, we were unable to determine if WS&H did in fact recommend prosecution when offences were committed.

5.6.7 Process for Recording and Collecting Administrative Penalties Was in Place – No Administrative Penalties Have Been Collected

A predefined process for recording and collecting Administrative Penalties assists in ensuring they are accurately tracked and accounted for.

Observations

- As WS&H had not imposed any Administrative Penalties to date, WS&H had not yet recorded any revenue earned from Administrative Penalties imposed.
- Although the planned process for recording and collecting Administrative Penalties had not yet been put into effect, WS&H did have an appropriate plan (**Appendix B**) as to how Administrative Penalties will be administered. The planned process did facilitate proper segregation of duties and included management review and follow-up of outstanding Administrative Penalties.

5.7 QUALITY ASSURANCE

Audit Criteria

A quality assurance review process should be in place. Specifically we reviewed whether:

- A sample of files from each Officer were selected for review by management on an annual basis;
- Higher risk files were targeted for review;
- The review assessed whether:
  - Deadlines for compliance with Improvement Orders were appropriate;
  - Extensions, if granted were appropriate;
  - Policies were complied with;
  - Appropriate documentation was maintained on file; and
  - Proper follow-up of Improvement Orders was done and in a timely manner;
- Management discussed the results of the file reviews with the Officers;
- Management watched for common problems noted through the file reviews for possible staff training ideas; and
- Management monitored inspection activity for consistency in interpretation of The Act and regulations (**Section 5.7.1**).

5.7.1 No Quality Assurance Process Was in Place for Reviewing/ Monitoring Work Performed by Officers Other than for Critical Incidents/Fatality Investigations

By not having a quality assurance process in place whereby there are regular file reviews for each Officer, this increases the potential that the results of inspections may not be adequately documented, Improvement Order issuance may be inconsistent, deadlines for compliance may be inconsistent, timeframes for extensions granted may be inconsistent, and office policies may not be consistently applied.

Observations

- Management advised that WS&H did not have a quality assurance process in place for reviewing a sample of each Officer's inspection files on an annual basis. WS&H only reviewed an Officer's inspection file when a problem arose with a particular Officer or Officers.
- WS&H conducts planned file reviews for investigation files pertaining to critical incidents, such as fatalities, due to their higher risk nature. Although there was a tracking sheet that was used to track who had reviewed the file, there was no documentation process in place to

standardize or record the review. As a result we were unable to determine whether the review that takes place for high-risk investigations files considers whether:

- Deadlines to comply with Improvement Orders were appropriate and documented;
- Extensions, if granted were reasonable and appropriate;
- The P&P Manual was complied with;
- Results of the investigation were appropriately documented and maintained;
- Proper follow-up of Improvement Orders was conducted, in a timely manner;
- The Officer responded to the serious incident in a timely manner;
- The Officer concluded as to whether the employer was in compliance with The Act; and
- Signatures of the Officer as well as the employer and worker representative and witnesses were obtained.

- WS&H management also advised that they did not make comparisons across Officers of the types of Improvement Orders issued, penalties recommended or the length of time given to comply with Improvement Orders, to determine whether there is consistency in enforcing The Act. Similarly, WS&H did not conduct a comparison of the number of Improvement Orders issued by each Officer in a given period. Management indicated that comparing the number of Improvement Orders issue by each Officer would not be useful as there could be large variances in the number of Improvement Orders issued due to the different types of workplaces visited.

6.0 Measuring and Reporting on Program Effectiveness - Observations and Conclusions

We reached the following overall conclusions in relation to the Measuring and Reporting on Program effectiveness audit objective and criteria:

Audit Objective and Criteria	Conclusions
To assess whether WS&H had sufficient operational program plans in place to cost effectively manage the performance of WS&H and whether there was sufficient reporting of its program effectiveness to the Legislature. In particular, whether:	WS&H did not have sufficient operational program plans in place to manage its performance. In addition, the information reported to the Legislature with respect to its program effectiveness was insufficient.
6.1 Strategic Direction Linked to Operational Plans	
• The operations of WS&H clearly link to Departmental operational plans.	• There were no documented strategic plans in place by which WS&H ensured that its operational plans supported its goals and strategic directions.
6.2 Program Effectiveness	
• An adequate mix of performance measures was developed for each of WS&H's objectives.	• Although eight performance measures have been identified, they have not been linked to planned outcomes and outputs. Therefore, we could not conclude on the adequacy of the mix of performance measures in place.
• Performance information was gathered for each performance measure.	• Not all performance information is gathered systematically. In addition, there was little evidence to support the gathering and analyzing of performance information by WS&H.
6.3 Program Evaluation Practices	
• WS&H regularly evaluated key aspects of its performance and took corrective action when necessary.	• WS&H did not undertake formal evaluations in relation to a set of performance expectations. Consequently WS&H did not have documented evidence as to whether WS&H was operating effectively and efficiently.
6.4 Performance Reporting on Program Effectiveness	
• Manitoba Labour's 2004/05 Annual Report included adequate information on WS&H's performance.	• The information on WS&H which was included in Manitoba Labour's 2004/05 Annual Report only partially fulfilled the Departmental Annual Reports Instructions issued by the Department of Finance.

In reaching the overall conclusions, we examined four key areas that relate to Measuring and Reporting on Program Effectiveness:

6.1 Strategic Direction Linked to Operational Plans;
6.2 Program Effectiveness;
6.3 Program Evaluation Practices; and
6.4 Performance Reporting on Program Effectiveness.

Detailed audit criteria and observations are presented in the related sections.

6.1 STRATEGIC DIRECTION LINKED TO OPERATIONAL PLANS

Audit Criteria

The objectives of WS&H should clearly link to departmental goals/strategic directions. Specifically we reviewed whether:

- The department had defined goals/strategic directions;
- WS&H had developed objectives for each pertinent departmental goal/strategic direction relating to WS&H;
- WS&H objectives were consistent with The Act it is responsible for administering;
- WS&H had a process for periodic review of its strategic direction in response to changes in departmental priorities, legislation, and the external environment; and
- WS&H had a clear process for how all resources are assigned to the various Branches and sectors within the Branches (**Section 6.1.1**).

6.1.1 WS&H Does Not Have a Formal Strategic Plan Linked to An Operational Plan. However a Special Report Completed in 2002 Titled "Government Response to the Report of the Workplace Safety and Health Review Committee" (The Response) Provided Broad Strategic Direction.

Observations

A Formal Strategic Plan was Not in Place

- Manitoba Labour had a vision, mission as well as guiding principles included in Manitoba Labour's 2004/05 Annual Report that related to WS&H. However, WS&H officials have not linked this information to an operational plan.
- WS&H management advised that while it did not have a titled "strategic plan" for WS&H's strategic direction, it considers the *Government Response to the Report of the Workplace Safety and Health Review Committee* (The Response) that was released in April 2002 as providing their strategic direction. *Building a Workplace Safety and Health Culture* was written by the Review Committee, consisting of members of The Council, after they completed a review that was requested by the Minister of Manitoba Labour in 2001.
- The Response presents how the government has accepted the various recommendations that were recommended by the Review Committee and explains how these recommendations will be implemented. The description as to how the recommendations will be implemented in the document is sometimes not clear.

- The Response focused on factors that will impact stakeholders. It did not address objectives and procedures for how WS&H should operate.
- WS&H does not have a future process for periodic review of its strategic direction. The Act contains a provision that requires The Council to review The Act and its administration at least once every five years. Findings and recommendations, if any, are to be provided to the responsible Minister.

6.2 PROGRAM EFFECTIVENESS

Audit Criteria

An adequate mix of performance measures should be developed for each of WS&H's objectives. In addition, performance information should be gathered for each performance measure. More specifically, we examined whether:

- Planned outcomes and outputs drove the selection of performance measures;
- Performance data gathered enabled WS&H to determine the extent to which WS&H's planned outcomes were being achieved;
- WS&H had performance measures and if they were a balanced mix of inputs, outputs and outcome measures (a mix of measures is desirable because it helps to give a complete picture on performance); and
- Performance information was analyzed on a periodic basis, including a comparison of budgeted results to actual results (**Section 6.2.1**).

6.2.1 Performance Information is Accumulated But Not Correlated in Relation to Planned Outcomes

Observations

- WS&H accumulates data on the following:
  - # of time loss WCB claims/100 WCB covered FTEs (Outcome Measure);
  - # of prosecutions completed (Output Measure);
  - # of safety and health participant training hours (Input Measure);
  - # of training courses (Input Measure);
  - # of complaints responded to (Output/Outcome Measure);
  - # of serious incident investigations (Output Measure);
  - # of inspections (Output Measure); and
  - # of Improvement Orders issued (Output Measure).

  Management indicated that ultimately all of these performance measures related back to their target of reducing the time loss injury rate by 25%.
- Management advised that performance information with respect to the 8 performance measures is reviewed approximately quarterly. However,

we were unable to review a sample of the information reviewed throughout the audit period as WS&H does not maintain a record of the reviews conducted or copies of documents reviewed. We did not find documentation confirming that the various measures are correlated in order to assess changes to outcomes (i.e., If more inspections are done, how does that affect the # of time loss injury WCB claims?).

- WS&H also gathered injury statistics for the sectors that were considered high-risk as well as the top 55 firms that were considered high-risk. However, this analysis is performed strictly on an ad hoc basis.
- Management advised that when performing analysis of performance information, WS&H did not perform comparisons of actual results vs. expected results for any of the aspects of performance evaluated.
- Without a set schedule as to when performance information should be reviewed, there is the possibility that WS&H will not review performance information in a timely manner. Without proper monitoring of its performance, WS&H may not operate efficiently and effectively and be unaware of it, and therefore unable to improve its operations.

6.3 PROGRAM EVALUATION PRACTICES

Audit Criteria

WS&H should regularly evaluate key aspects of its performance and take corrective action when necessary. More specifically, we looked to find whether:

- WS&H had an evaluation framework which identified the criteria that guided the selection of which aspects of WS&H to evaluate, frequency of evaluations, budget requirements for evaluations, data sources and so forth. Without an evaluation framework and periodic evaluations of its performance, WS&H may continue to operate in the same manner despite the fact that it may not be operating as effectively and efficiently as possible;
- Evaluations which may have been conducted include: the scope, approach, and sampling methodology; the findings; and the required action to address issues that were identified; and
- There was a strategy/plan for implementing changes as necessary based on evaluations conducted and when corrective action was not taken, there was documentation as to the rationale for not proceeding with a particular recommendation (**Section 6.3.1**).

6.3.1 No Program Evaluation

Observations

- WS&H did not have an evaluation framework, and did not conduct regular periodic evaluations of its performance.
- Management advised that it had been approximately 8 to 10 years since a formal evaluation was performed on the division.

6.4 PERFORMANCE REPORTING ON PROGRAM EFFECTIVENESS

Audit Criteria

Manitoba Labour's 2004/05 Annual Report should include adequate information on WS&H's performance. More specifically we looked to find whether the performance information reported by WS&H in its annual report is consistent with the Province's directives on performance reporting. The Province's directives on annual reporting are contained in the Departmental Annual Reports Instructions issued by the Comptroller's Division of the Department of Finance. We used these directives to determine whether WS&H is complying with Government expectations regarding the content of annual reporting (**Section 6.4.1**).

6.4.1 Reporting Not Entirely Consistent with Government Instructions

Observations

- In relation to the *Government Annual Report Instructions*, the section on WS&H in Manitoba Labour's 2004/05 Annual Report included a narrative for each main appropriation and sub-appropriation, objectives, and expenditure information. However, although directed to do so in the Instructions, the section on WS&H did not focus the reader on the major accomplishments of WS&H, but rather provided a list of its accomplishments. The other two inconsistencies noted regarding the section on WS&H in the annual report, with respect to the Instructions, were omissions as follows:
  - Relating planned activities and expected results to actual accomplishments; and
  - Variance explanations for year-over-year variances when the authorized expenditure level increased by supplementary funding.

7.0 Focusing Educational Initiatives - Observations and Conclusions

We reached the following overall conclusions in relation to the Focusing Educational Initiatives audit objective and criteria:

Audit Objective and Criteria	Conclusions
To assess whether WS&H's educational initiatives were influenced by trends and statistics of accidents/occurrences in the workplace such that the initiatives were likely to contribute to the maintenance/creation of safer workplaces. In particular, whether:	WS&H's educational initiatives were influenced by accidents/occurrences in the workplace. However, WS&H did not use a schedule to plan what educational efforts were performed, except for the ongoing training courses it offered which were not risk-based.
7.1 Prioritizing Educational Initiatives	
• Educational initiatives were prioritized to focus on higher risk industries or sub-industries, and were responsive to incidents.	• WS&H prioritized its educational initiatives to focus on higher risk areas, and was responsive to incidents.
7.2 Risk Rating Process	
• An industry and sub-industry risk rating process was in place.	• An industry and sub-industry risk rating process was in place informally throughout the year. Annually, WS&H reviewed time loss injury rates for each major industry and some sub-industries to determine what areas needed to be focused on in the future.
7.3 Annual Schedule of Educational Initiatives and Follow-up	
• Based on the risk ratings determined for each industry and sub-industry, an annual schedule of the educational efforts to be performed was prepared.	• A schedule of educational efforts to be performed was only used for the training courses offered by WS&H, not for all educational efforts.
• Periodically, a review of the educational schedule, as compared to educational efforts put forth was completed to determine if the plan could be fulfilled and if not, whether it was revised accordingly.	• The training schedule was reviewed approximately every 6 months to determine what changes needed to be made for the next bi-annual training schedule.

In reaching the overall conclusions, we examined three key areas that relate to Focusing Educational Initiatives:

7.1 Prioritizing Educational Initiatives;
7.2 Risk Rating Process; and
7.3 Annual Schedule of Educational Initiatives and Follow-up.

Detailed audit criteria and observations are presented in the related sections.

7.1 PRIORITIZING EDUCATIONAL INITIATIVES

Audit Criteria

Educational initiatives should be prioritized to focus on higher risk industries or sub-industries, and should be responsive to incidents (**Section 7.1.1**).

7.1.1 Educational Initiatives Were Appropriately Prioritized

Observations

- WS&H used several different methods to educate the workforce about workplace safety and health. Some of the means used to educate were as follows:
  - Training Courses;
  - Bulletins;
  - Newsletters;
  - Media Campaigns; and
  - Work performed by Priority Firms Team.

  Although the training courses provided by WS&H were not focused on high-risk areas, all of the other means used by WS&H of educating about health and safety did focus on high-risk topics.

Training Courses

- WS&H generally offered approximately 10 training courses throughout the year which were focused on increasing awareness of the legislative requirements.

Bulletins

- Bulletins highlighted incidents that had occurred and informed other employers about what precautions can be taken to prevent a reoccurrence. The bulletins were mailed out to all safety and health committees in the province that WS&H was aware of, and posted on WS&H and SAFE Manitoba's websites.

Newsletters

- WS&H published quarterly newsletters and distributed them to all employers in the province. Newsletters highlighted current topics that were considered high-risk. In addition, the newsletters contained the training schedule and a section which listed the cases that had been recently prosecuted.

Media Campaigns

- WS&H, through their involvement with the SAFE Work initiative, had conducted a major public awareness campaign using television, radio, billboards, internet and print. Campaign themes were determined by injury trends and focused on high-risk industries. A survey conducted by WCB indicated that over eight out of ten Manitobans were aware of the SAFE Work message.

Work Performed By Priority Firms Teams

- The Priority Firms Team educated the top 55 employers as well as the employers in the high-risk sectors about the benefits of operating their workplace in a safe and healthy manner. Through this education process WS&H hoped to shift corporate culture to embrace workplace safety and health in the long-term.
- In addition, WS&H had youth and agricultural coordinators that worked extensively with the community, schools and local organizations to educate and to create safe workers for tomorrow.

7.2 RISK RATING PROCESS

Audit Criteria

An industry and sub-industry risk rating process should be in place. Specifically we reviewed whether:

- WS&H used fatality rates and time loss injury rates as a guide to high-risk areas that need to be focused on for future training/education; and
- Industry and sub-industry risk ratings were updated periodically in response to reported events as well as trends and statistics of accidents/occurrences in workplaces (**Section 7.2.1**).

7.2.1 Statistical Data Was Informally Used to Determine Future Education

Observations

Fatalities and Time Loss Injury Statistics Are Used to Focus Future Education

- WS&H did not have a risk rating process in place to rank all of the industries and sub-industries in terms of their level of risk. However, WCB and WS&H jointly published an annual injury statistics report that contained the time loss and all injury rates for all major industry sectors and selected sub-sectors. Management advised that this report assisted WS&H with determining what industries and sub-industries needed to be focused on for future educational initiatives. However, the link between statistical data and educational initiatives undertaken was not clearly demonstrated.
- As noted in **Section 4.1.1**, WS&H did have a risk rating process for individual employers. Based on this risk rating process 55 priority firms were determined. After this list was determined, two Officers from the Priority Firms Team were assigned to work with these high-priority firms to enhance their understanding of The Act and regulations, and to assist them with implementing a workplace safety and health program.

- Without a risk rating process in place to rank all industries and sub-industries, WS&H may be missing an opportunity to educate a group of employers with similar issues.

Updating Risk Ratings on An Ongoing Basis

- Time loss injury rates are only available from WCB annually. However, WS&H did review the number of injury claims on a regular basis to determine whether the number of claims was trending upward or downward. Based on this information, WS&H was able to tell whether, in general, they were having the desired effect.
- Therefore, although WS&H is only able to obtain the time loss injury rates annually, the other data that is available to WS&H monthly is sufficient for determining what educational initiatives should be undertaken.

7.3 ANNUAL SCHEDULE OF EDUCATIONAL INITIATIVES AND FOLLOW-UP

Audit Criteria

Based on the risk ratings determined for each industry and sub-industry, an annual schedule of the educational efforts to be performed should be prepared. In addition, periodically a review of the educational schedule, as compared to educational efforts put forth should be completed to determine if the plan can be fulfilled and if not it should be revised accordingly (**Section 7.3.1**).

7.3.1 An Annual Schedule Was Not Prepared for All Educational Efforts

Observations

Annual Schedule Was Used Only for Training Courses

- WS&H prepared a bi-annual training schedule that was determined based on changes to The Act and regulations, previous demand for the courses and whether there were any new courses that WS&H believed were necessary. The schedule included approximately 10 courses, a small description of each course and the dates and locations that the courses would be held.
- The schedule did not focus on high-risk industries and sub-industries. Given the limited resources available to WS&H, the training courses offered by WS&H focused on assisting employers and employees with understanding The Act and the regulations. The Act specifies that it is the duty of employers to train workers in performing work tasks and functions so as to ensure the safety, health, and welfare of all workers. Therefore, WS&H entrusted the employers as well as the various industry safety associations with the responsibility of addressing industry specific topics in their training courses.

Follow-up of the Training Schedule Was Completed

- After all of the courses from the last training schedule had passed, WS&H performed a course enrollment analysis. This analysis was performed to assist in determining how many times each of the given training courses should be offered during the next 6 month period. Consideration was also given to whether any new courses should be added based on recent issues that had developed, or based on requests received from course participants.
- Following up on the training schedule and considering what changes are necessary helps to ensure that WS&H is as effective as it can be in its educational efforts.

8.0 Recommendations for WS&H

MEASURING AND REPORTING ON PROGRAM EFFECTIVENESS

Strategic Direction

- That a comprehensive plan be developed for the strategic direction for WS&H incorporating The Response. The strategic direction for WS&H should link to Departmental operational plans and include:
  - Planned outcomes with targets that are measurable; and
  - Planned outcomes that are consistent with The Act.
- That a clear process or criteria for determining how resources are allocated within WS&H be developed and implemented.

Measuring Program Effectiveness and Program Performance Reporting Information

- That a performance measurement system be developed that will provide WS&H with data that relates to how efficiently and effectively WS&H is being operated.

Program Evaluation

- That an evaluation framework be developed and implemented that will guide the undertaking of periodic evaluations of key aspects of WS&H's performance, including taking corrective action when necessary based on evaluation results.
- That there be follow-up on evaluations with a documented plan that articulates:
  - Where corrective action will be taken, when and how;
  - Which proposals require further consideration, when that will be undertaken and how; and
  - Which proposals are not considered appropriate for implementation and the rationale for not proceeding with them.

Reporting on Program Effectiveness

- That Manitoba Labour's Annual Report provide information on WS&H that is consistent with the Departmental Annual Report Instructions.

IDENTIFYING AND PRIORITIZING WORKPLACES FOR INSPECTION

Risk Rating Process

- That a risk rating process be considered for use that would rank larger employers in the province in terms of their level of risk.
- That an assessment be performed, at least annually, as to which employers in the province have the highest risk for injury and therefore should be the focus of future inspections. In addition, we recommend that WS&H receive regular statistical data on these and all other employers so that WS&H can re-prioritize accordingly and monitor its inspection progress.

Annual Schedule of High-Risk Inspections and Follow-up

- That an annual inspection plan for high-risk employers be developed and followed-up to ensure that the inspections are conducted.

Timing of Inspections

- That consideration be given to the time of day that would be considered highest risk in each industry when determining what time of day to perform inspections, and that inspections be targeted at the times that are considered higher risk.

Prioritizing Inspections

- That a clear basis for decision-making be implemented by WS&H to determine the number of Officers to work on the Priority Firms Team.

INSPECTION AND MONITORING PROCESSES

Enforcement of, and Compliance with, The Act

- That Administrative Penalties be imposed when there is non-compliance with Improvement Orders.
- That Officers issue Improvement Orders in all instances where non-compliance is noted.
- That acceptable timeframe ranges for employers to comply with Improvement Orders be stipulated in the P&P Manual.
- That a record be kept of all cases recommended to Manitoba Justice for prosecution so that it is documented that WS&H pursued further action for offences committed.

- That a policy be implemented that the method of Improvement Order follow-up to be used by Officers be appropriate given the types of Improvement Orders issued. In instance where a different form of follow-up is chosen than what is stipulated in the policy, it should be noted as an exception and the reason for the exception should be documented in the file.
- That when an Officer receives a Compliance Report from an employer indicating how Improvement Orders were complied with, that a copy is maintained on file so that there is evidence of follow-up and compliance.
- That Re-Inspection Reports are completed for all Improvement Order Forms for which all Improvement Orders have been complied with, and that all Improvement Orders are followed-up and that the follow-up is properly documented.

Responses to Incidents and Complaints

- That all fatalities and serious injuries be responded to, in person, immediately upon notification.
- That all complaints received be responded to as soon as possible and in accordance with the "Prioritization of Complaints" Policy.
- That management run reports regularly with respect to the status of complaints received so that they are aware when complaints received have gone unattended to for extended periods.

Quality Assurance

- That a quality assurance review process be implemented as part of the annual performance evaluation process as follows:
  - That a sample of files from each Officer be selected for review on an annual basis;
  - That higher risk files be targeted for review;
  - That the reviews assess whether:
    - Deadlines for compliance with Improvement Orders were appropriate;
    - Extensions, if granted were appropriate;
    - Policies were complied with;
    - Appropriate documentation was maintained on file; and
    - Proper follow-up of Improvement Orders was done and in a timely manner;
  - That management discusses the results of the file reviews with the Officers;
  - That management watches for common problems noted throughout the file reviews for possible staff training ideas;
  - That management monitors inspection activity for consistency in interpretation of The Act and regulations;
  - That management performs test re-inspections of workplaces after an Officer has completed an inspection, to determine if the results

of the two inspections were comparable or whether the Officer may need additional guidance; and

- That management compares the number of Improvement Orders issued by Officer as well as the number of inspections completed by each Officer in a given time period to determine if work is being distributed appropriately.

Identification and Maintenance of Employer Workplace Information

- That information about additional employers in the province be obtained and maintained so that WS&H can make informed decisions about what additional workplaces to focus their efforts on through inspections.
- That WS&H review and clarify what data fields in LINK should be changed to required fields to ensure that all pertinent information about an employer is included in the employer workplace database.
- That an individual be assigned the responsibility of obtaining updated employer information on a regular basis (monthly). One example of another database that WS&H could use to update its database is the Companies Office business registry.
- That a general review be performed to ensure that data is being stored consistently and appropriately in LINK.

Policy and Procedures Manual

- That the P&P Manual include the policy that outlines "Prioritization of Complaints" and that the turnaround time for complaints be based on the type of complaint received. In addition, that the P&P Manual include guidance as to what form of Improvement Order follow-up is acceptable under what circumstances.
- That a form or tracking device be developed that summarizes the details of the inspections of mines performed, including when the inspection was done, by whom, and what sections of the mine were inspected as evidence that each mine is being inspected as often as required per policy.
- That consideration be given to removing the standard wording that automatically appears on the Re-Inspection Report form or perhaps the use a drop-down menu, to reduce the risk of misleading wording with respect to how the Improvement Orders were followed-up.
- That consideration be given to the use of a checklist/tool to assist Officers when completing all inspections/investigations that would help ensure that all relevant aspects of The Act and regulations have been considered.
- That the standard forms in place be modified so that an Officer is required to provide a general description of the visit.
- That the P&P Manual be reviewed and updated for the new regulations that took effect on February 1, 2007.

- That the process undertaken in producing a new policy/procedure or making changes to an existing policy/procedure be documented, including approvals, and that these documents be kept on file.
- That acceptable timeframes for employers to comply with the various types of Improvement Orders be developed and documented and that these acceptable timeframes be included in the P&P Manual to ensure that all Officers are aware of the timeframes.
- That a policy be developed and included in the P&P Manual outlining the criteria as to when extensions on compliance dates can/should be granted.
- That the P&P Manual include a requirement to develop a plan that dictates how frequently each employer in the province should be inspected.

Performance and Documentation of Inspections

- That an annual work plan of all non-emergency inspections that are to be completed be prepared.
- That when at all possible, inspections be performed on an unannounced basis.
- That all inspections be conducted and information recorded in accordance with the P&P Manual.
- That all documentation to support the training received by new Officers be maintained on file.
- That when an exception is made for a new Officer not to take a certain aspect of the regular training, that this be recorded as an exception and that the exception be appropriately approved.
- That "Period of Time (Field) Evaluations" be completed for all new Officers and maintained on file. In addition, WS&H should develop a policy of a minimum number of field evaluations that should be completed for each new Officer.
- That performance reviews should be completed for all new Officers prior to the Officers beginning to complete inspections/investigations without the constant supervision of a more senior Officer.
- That all staff receive performance reviews at least annually and that these are maintained on file.
- That adequate evidence be obtained and maintained for all Improvement Orders, such as:
    - A detailed description of what the Officer observed or the steps taken to determine that the deficiency existed; and where applicable
    - Digital pictures.
- That signatures be obtained from the Officer and employer and worker representatives on all formal communication that flows between WS&H

and the employer, and that these signed documents be maintained on file.

Performance and Documentation of Investigations

- That the details of all investigations be well documented and that such documentation be maintained on file, regardless of the severity of the incident.
- That all investigations be conducted in accordance with the P&P Manual.
- That indisputable evidence be obtained and documented for all investigation files.
- That signatures be obtained from the witness and the Officer on all Witness Statements and that these signed documents are maintained on file. If a witness refuses to sign a Witness Statement, this should be documented on the Witness Statement as well as the reason given by the witness.

FOCUSING EDUCATIONAL INITIATIVES

Risk Rating Process

- That in addition to determining the risk ratings of employers, WS&H implement a plan to calculate risk ratings of all industries and sub-industries in the province on a regular basis to determine future education requirements.

Annual Schedule of Educational Initiatives and Follow-up

- That an annual schedule of all educational initiatives to be performed be prepared and followed-up regularly.

Response from the Department of Labour and Immigration

General Comments

The Manitoba Government has accomplished a number of significant achievements during the last five years that have helped to reduce the time-loss injury rate in Manitoba by approximately 19%, which, given the increase in the workforce over this period, could have resulted in approximately 4,000 fewer time-loss injuries per year for Manitoba workers. In 2002, *The Workplace Safety and Health Act* was significantly amended, bringing Manitoba law into the mainstream of Canadian occupational health and safety law. In 2006, the workplace safety and health regulations were updated following an extensive four-year consultation process. These initiatives represent the most extensive review of provincial workplace safety and health legislation in over 25 years.

The operations of the Workplace Safety and Health Division have been reorganized to ensure a greater emphasis is placed on increased inspections of high risk sectors, as well as general inspections and investigations. As a result, inspections by officers of the Division have almost doubled from approximately 2,760 in 2001 to 5,194 in 2005. In 2002, the Division conducted a full review of its policies and procedures. A comprehensive policy and procedures manual was established for all aspects of Division operations to ensure consistency with legislative requirements. The Division also established a strong partnership with the Workers Compensation Board of Manitoba (WCB) which included the development and implementation of the SAFE Work public awareness and initiatives campaign aimed at strengthening the culture of safety and health in the province.

As recognized in the report, the internal responsibility system is one of the key concepts of workplace safety and health legislation across Canada in which employers, supervisors and workers have responsibilities for safety and health in their workplaces. Workplace safety and health committees and worker representatives are the primary mechanism for employers and workers to work together in ensuring that the system is effective. The role of the Workplace Safety and Health Division, as in other Canadian jurisdictions, is to promote this system by enforcing the legislation, monitoring to ensure effectiveness through inspections and by educating parties on their duties.

Response to Recommendations

The Report of the Auditor General contains over 50 recommendations which the Division has discussed extensively with the Office of the Auditor General. We note that the Report identifies a number of issues which will strengthen the Division's performance and will support sustainable improvements in workplace safety and health outcomes in Manitoba. The Workplace Safety and Health Division has begun to act on a number of key recommendations as a result of discussions during the audit process. The Division will develop a process to address the recommendations contained in the report and to report on changes implemented.

The Workplace Safety and Health Division continues to work with the WCB, including working on a long-term joint prevention plan for the purpose of further injury reduction. This planning process will provide the Division with an opportunity to further align its activities with its mandate under the Act and the operational plan of the Department of Labour and Immigration. In the process of developing this plan, the Division will give careful consideration to the Auditor General's recommendations respecting strategic direction to build on its strategic planning process to improve reporting on program effectiveness.

For purposes of inspections, the Workplace Safety and Health Division currently uses a risk ranking process for larger employers in the province, as well as for higher risk sectors. The Division will review its approach to prioritizing workplaces for inspection to ensure that high risk employers and sectors receive appropriate monitoring by the Division. This will include an assessment at regular intervals to ensure that the risk ranking process is current. The Division will also give consideration to determining the time of day or year that would be considered highest risk for industries. Any targeted initiatives that may result would be considered in the context of financial constraints and provisions of the collective bargaining agreement.

In reviewing its process of risk assessment, the Division recognizes that while the WCB data covers the majority of high risk employers in Manitoba, it only covers approximately 70% of all employers. The Division will consider the use of other sources of information, such as the Companies Office business registry, to supplement the current information. Taking into account resource implications, the Division will continue to systematically focus on higher risk workplaces, but will also develop a plan to broaden coverage by increasing random inspections of lower and medium-risk firms.

The Workplace Safety and Health Division currently undertakes an extensive inspection and investigation program. As indicated in the Auditor General's report, the Division conducted 746 investigations and 5,194 inspections in 2005. In this regard, the Division appreciates the conclusion in the report that inspections and investigations were well documented and performed by well trained individuals. The Division will review the performance of the system of inspections and investigations, including a review of its documentation of performance, to further ensure consistency with the Act and Division policies and procedures.

The intent of the administrative penalty process under the Act is to bring about compliance with orders by employers and other parties with duties under the Act. In cases where reminder letters have been issued, a significant number of employers comply in a timely fashion as a result of follow-up by the Division. The Division will review its administrative penalty procedures to ensure the issuance of penalties in appropriate circumstances.

The Workplace Safety and Health Division is currently undertaking a further review and updating of its Policy and Procedures Manual to ensure consistency with the recent extensive regulatory changes. Regular reviews of the manual will be undertaken to ensure it is up to date. It should be noted that action was recently taken to ensure that a system of documentation, including written approvals, will apply to this review.

In 2002, in response to recommendations from the Workplace Safety and Health Review Committee, the Division updated its training initiatives on core workplace safety and health issues including: rights and responsibilities, supervisor training, committee and representative inspections and investigations. Training programs will be reviewed with a view to expanding the number of persons trained and to ensure the effectiveness of programs. The Division will also develop an annual schedule of educational initiatives to be performed.

Appendix A

GLOSSARY OF TERMS

Administrative Penalty	A fee that is imposed, by the Deputy Minister of Manitoba Labour, on a person that has failed to comply with an improvement order.
Client Services Officer	An individual employed with WS&H whose duties include receiving telephone calls about accidents and complaints in/about workplaces in the province.
Complaint	A grievance received by WS&H regarding concerns with respect to safety and health in the workplace.
Compliance Date	The date specified on an Improvement Order as to when the contravention shall be remedied.
Employer	An employer as defined in The Act includes: *"a) every person whom by himself or his agent or representative employs or engages one or more workers, and* *b) the Crown and every agency of the government".*
Improvement Order	An order contained in a legal document that is issued by an Officer, requiring that a person remedy a contravention of The Act or the regulations within such period as may be specified in the order.
Inspection	The process an Officer follows while visually inspecting a workplace to ensure that the employer is in compliance with *The Workplace Safety and Health Act* as a result of complaints received, requests for information or to be proactive in complying with The Act.
Investigation	The process an Officer follows while attending a workplace to investigate a matter such as a fatality, serious incident, right to refuse, discriminatory action. In the case of fatalities and serious incidents, the purpose of the investigation is to determine what caused the incident and if contraventions of The Act played a role.
Offence	The Act defines a person who is guilty of an offence as *"Every person who* *a) contravenes this Act or the regulations;* *b) fails to comply with an order made under this Act or the regulations;* *c) knowingly obstructs or makes a false statement to a safety and health Officer engaged in the exercise or performance if his or her powers or duties; or*

Appendix A (cont'd.)

GLOSSARY OF TERMS

d) knowingly makes or causes to be made a false entry in any register, book, notice or other document to be kept by him under the Act or the regulations, or deletes or destroys or causes to be deleted or destroyed any true or proper entry in any such document".

Officer	A Safety and Health Officer that is employed with WS&H and whose duties include conducting inspection and investigations of workplaces in the Province.
Person	A person, as defined in The Act *"includes a partnership or an unincorporated association".*
Serious Incident	An incident that results in: a) death, or serious injury (as defined below); b) collapse or structural failure of a building, tower, crane, hoist; c) temporary construction support system or excavation; d) an uncontrolled spill or escape of a toxic, corrosive or explosive substance; or e) explosion, fire or flooding.
Serious Injury	a) fracture of a major bone; b) amputation; c) loss of sight; d) internal hemorrhage; e) third degree burns; f) unconsciousness resulting from concussion, electrical contact, asphyxiation; g) poisoning; h) cuts requiring hospitalization or time off work; i) any injury resulting in paralysis; or j) any other injury likely to endanger life or cause permanent disability.
Stop Work Order	An order that is issued when an Officer *"is of the opinion that any activities which are being, or are about to be, carried on in a workplace, involve or are likely to involve an imminent risk of serious physical or health injury, or where a contravention specified in an Improvement Order was not remedied"* and a stop work warning was given. Such an order may provide *"for any one or more of the following matters:* *a) the cessation of those activities;*

GLOSSARY OF TERMS

Appendix A
(cont'd.)

b) that all or part of the workplace be vacated;
c) that no resumption of those activities be permitted by the employer".

Time Loss Injury Rate	The risk to a worker of a workplace injury or disease, which results in time at work being lost, within a calendar year.
Worker	As defined in The Act, includes: *"a) any person who is employed by an employer to perform a service whether for gain or reward, or hope of gain or reward or not,* *b) any person engaged by another person to perform services, whether under a contract of employment or not* *(i) who performs work or services for another person for compensation or reward on such terms and conditions that he is, in relation to that person, in a position of economic dependence upon that person more closely resembling the relationship of any employee than that of an independent contractor, and* *(ii) who works or performs services in a workplace which is owned or operated by the person who engages him to perform services,* *(c) any person undergoing training or serving an apprenticeship at an educational institution or at any other place".*
Worker Safety and Health Representative	As defined in The Act, *"means the person designated as a worker safety and health representative under this Act".*
Workplace	As defined in The Act, *"means any building, site, workshop, structure, mine, mobile vehicle, or any other premises or location whether indoors or outdoors in which one or more workers, or self-employed persons, are engaged in work or have worked".*

Appendix B

PROCEDURES FOR NOTIFICATION AND COLLECTION OF ADMINISTRATIVE PENALTY FEES

Administrative Penalties
Procedures for Notification and Collection of Fees

Once the Deputy Minister of Labour and Immigration has granted approval for an administrative penalty to be issued, the following procedure is to be implemented:

1. The Legal Liaison will advise the Legal Administrative Assistant to send out the appropriately completed "Notice of Administrative Penalty", signed by the Deputy Minster, to the employer via registered mail.
2. A copy of the Notice of Administrative Penalty is to be forwarded to the Financial Services Division.
3. The electronic copy of the Notice of Administrative Penalty will be attached to a Case Note in the LINK application.
4. Financial Services Division will advise the Workplace Safety and Health Division if payment for the administrative penalty is not received after 40 days from the date of issue of the Notice.
5. The Legal Liaison will send out a form letter to the employer advising of consequences if payment is not received. (filed into judgment) For tracking purposes, this letter is BF'd for 10 days.
6. When the 10 days have passed, the Legal Administrative Assistant will contact Financial Services to determine if payment has been received.
7. If Financial Services advised that no payment has been received, the file is forwarded to the Employment Standards Division with instructions to do one, or all of the following:
    i. File into judgment;
    ii. Gather intelligence;
    iii. Go hard with collection (i.e., possible seizure of assets).
8. Once collected, funds from the Administrative Penalties process go into a special Public Education Account. These funds are to be spent on public education initiatives and tracked for reporting to Treasury Board.

Appendix C

SAMPLE ADMINISTRATIVE PENALTY LETTER (WARNING LETTER)

Company ABC
123 Main Street
Winnipeg, MB A1A 1A1

Dear Sir/Madam:

Subject: Improvement Orders

I am writing in regard to the following improvement orders issued by me to your firm on:

Served Date	Order #	Order Title
31 March 2005	1	Fire Extinguishers
31 March 2005	2	First Aid Kit

It is the duty of every person or firm against whom an improvement order is issued to comply with the order. Section 35 of the Workplace Safety and Health Act requires the person or firm to prepare a written report on the measures taken, and any measures yet to be taken, to comply with the order within seven days following the compliance date.

A copy of the report must be provided to the Safety and Health Officer who issued the order and the workplace safety and health committee (worker safety and health representative) in your workplace (and must be posted in a prominent place in your workplace).

To date I have not received the report on compliance with the improvement orders that is required by Section 35 of the Act. I request that you provide me with a copy of the compliance report within seven (7) days of the date of this letter. Please note that a failure to comply with an improvement order issued under the Act can result in an administrative penalty being issued against you (your firm) in accordance with Section 53.1 of the Act.

Sincerely,

Jane Doe
Safety and Health Officer

Excerpt: The Auditor General Act

Audit of operations

14(1) In carrying out his or her responsibilities under this Act, the Auditor General may examine and audit the operations of a government organization with regard to any of the following matters:

(a) whether financial and administrative provisions of Acts, regulations, policies and directives have been complied with;

(b) whether public money has been expended with proper regard for economy and efficiency;

(c) whether the Assembly has been provided with appropriate accountability information;

(d) whether the form and content of financial information documents is adequate and suitable.

No obstruction

15(2) No person shall obstruct or provide false or misleading information to the Auditor General or a person employed under the Auditor General in conducting an examination or audit under this section, or conceal or destroy any records or things relevant to an examination or audit.

Copies of this report may be obtained by contacting:

Office of the Auditor General

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